

THE 1609/270
PROCEEDINGS
OF THE
COMMITTEE.

APPOINTED TO TRY

The Merits of the Derby Election;

Which began on the First of February, 1776,
And ended on the Eighth of the same Month,

W H E N

DANIEL PARKER COKE, Esq; the Petitioner,
Was declared Duly Elected.

Corruption in this Land shall lose his Sway,
Meeting the Check of such another Day:
And since this Business so far fair is done,
Let us not leave, till all our own be won.

SHAKESPEARE.

Printed for J. SANDERS, Bookseller, in Derby;
And sold by Mr. GREGORY, Leicester; Mr. CRESWELL, and
Mr. BURBIDGE, Booksellers, in Nottingham.

M DCC LXXVI.

THE
PROCEEDINGS
OF THE
COMMITTEE



The Minutes of the Early Education

Which began on the 1st of February, 1862,
and continued to the 1st of March, 1862.

DAVID L. R. ...
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P R E F A C E.

MANY Gentlemen at Derby, and in the neighbourhood, having express'd a desire to know something more than the mere event of the petition, the following particulars are submitted to the public.

The reader will excuse the imperfect state in which this work will appear, when he learns that there was no intention originally to publish it: nor, indeed, would it have been possible to gratify the curiosity of the public in any shape, had not Mr. Douglas (who has already publish'd a very accurate History of the Reports of the Committees during the first Session of this Parliament) been kind enough to shew his intended report of the case to the Petitioner, and permitted him to select such parts of it, as were necessary to explain to the reader the previous points of law, which were argued before the evidence was gone into, and which are necessary, to make the different resolutions of the Committee intelligible.

The

The speeches of the counsel for the sitting member, and Mr. Bearcroft's reply (which were taken by a short-hand writer, employ'd for the purpose) are added at the end of this work.

The inaccuracies, which will unavoidably appear in those speeches, must be attributed to the short-hand writer, and not to those by whom they were spoken; as it is notorious, that this cause was conducted with great ability on both sides.

It is more than probable, that many mistakes will be found in this report of the case, from the great variety of other business, which has prevented any particular attention to this: however, it will be of little consequence, as they will be rectified by Mr. Douglas's third volume of Reports, which is intended to be published in the course of next winter.



ERRATA.

- Page 3. l. 8. for on, read to*
P. 12. l. 3. for member. Can't say, read member, but can't say.
P. 13. at the end of line 5, 6, 8, 9, 10, 11, 13, 14, insert the word Offered
P. 13. l. 12. for Moller, read Mellor
P. 17. l. 6. after the word indentures, insert a period
P. 17. l. 7. for it, read one
P. 19. l. 18. for right, read a right
P. 21. l. 24. for left with, read left it with
P. 25. l. 1. for manner, read mayor
P. 33. l. 22. for 1774, read 1744
P. 48. l. ult. for 1750, read 1748

CANDIDATES.

JOHN GISBORNE, Esq; Sitting Member.
DANIEL PARKER COKE, Esq; Petitioner.

COMMITTEE.

PAUL FIELD, Esq; Chairman,	Hertford
HON. GEORGE VENABLES VERNON,	Glamorganshire
HON. CHARLES MARSHAM,	Kent
SIR HENRY HOUGHTON, Bart.	Preston
SIR THOMAS WYNNE, Bart.	St. Ives
SIR THOMAS MILLER, Bart.	Lewes
THOMAS DUNDAS, Esq;	Stirlingshire
CHARLES DUNDAS, Esq;	Richmond
ANDREW STUART, Esq;	Lanerkshire
PHILIP RASHLEIGH, Esq;	Fowey
THOMAS HAY, Esq;	Lewis
BENJAMIN L'ANGELOIS, Esq;	St. Germain's
STAATES LONG MORRIS, Esq;	Bamf, Elgin, &c.
NOMINEES.	
Of the Petitioner,	
ABEL MOYSEY, Esq;	Bath
Of the Sitting Member,	
JONH ELWES, Esq;	Berkshire



Counsel for the Petitioner.

Mr. BEARCROFT, Mr. BALGUY.

Agent, Mr. LLOYD.

Counsel for the Sitting Member.

Mr. MANSFIELD, Mr. LEE. 54

Agent, Mr. COLLERYWOOD.

THE PROCEEDINGS, &c.

FIRST DAY.

Jouis 1^o Die Februarii, 1776.

ON Thursday the first of February, the committee met, and the petitions of Mr. Coke and the electors were read, setting forth, That the petitioner had a majority of legal votes, and ought to have been returned; but that Mr. Christopher Heath, the returning officer, had been guilty of the grossest partiality, during the whole course of the election, by admitting several persons upon the poll, whom he ought to have rejected, and by rejecting several whom he ought to have admitted; and in particular, by rejecting several persons, who had frequently tendered themselves before the election, and whom he knew to have an undoubted right of voting.

There is no determination of the house of commons of the right of voting in Derby.

The numbers on the poll, as produced by Mr. Heath, the mayor, were,

For Mr. Gisborne	—	—	—	343
For Mr. Coke	—	—	—	329
Majority for Mr. Gisborne	—			14

B

Mr.

Mr. Bearcroft, as counsel for the petitioner, opened his case, by stating the constitution of the borough; and it was admitted by the counsel on both sides, that the right of voting is in every member of the corporation; mayor, aldermen, brothers, and capital burgesses, and the burgesses at large. He stated it (saying at the same time, that he was not apt to be sanguine in matters of this kind) as the grossest case of ill conduct in the returning officer, and the clearest point that had ever been brought before a committee.—He stated, that by the constitution of Derby, and the express words of the charter, the mayor and three aldermen have a right to admit burgesses or freemen (for it is agreed that there is no distinction between them); that great numbers of burgesses, who had an inchoate right to their freedom, had tendered themselves to the mayor and three aldermen to be admitted before the election, and that they had been refused for base election purposes.

He then divided his case, and said, that, of those men who tendered themselves, and afterwards came to the poll to give their votes for the petitioner, he meant to add forty-two to the poll; twenty-six of whom were entitled to their freedom, as the sons of freemen, or as having served apprenticeships to freemen: and those twenty-six were resident in the town of Derby.

Twelve, who were under the same circumstances, but were non-resident at the time they claimed.

Four, who had been admitted to their freedom, but were rejected by the mayor: two, because their names could not be found in the minute book, which lay upon the table; and two, who were rejected as having been disfranchised; but not legally disfranchised.



He

He also proposed to strike off sixteen from the poll of the sitting member: five, who live in an alms-house, called Derby-hospital; three, for having received parish relief; three honorary burgeses, admitted within the year; three, who had been admitted on the title of servitude, without serving a seven years apprenticeship; and two, who were never admitted on their freedom.

In the course of the cause, however, it was only necessary to go into the titles of the twenty-six, comprized in the first class; because it was admitted by the counsel for the sitting member, that if those twenty-six were established as good votes, it would decide the election, as to the numbers on the poll. The counsel however here for the sitting member, reserved to themselves a power to go afterwards into a case for a void election, by proving bribery, treating, &c. against the petitioner.

It was admitted on both sides, that the previous rights, which give a title to the burgesship of Derby, are, 1st, To be the son of a burges, born after the admission of his father to his freedom: 2dly, To have served an apprenticeship of seven years to a freeman.—It was added by the counsel for the sitting member, at the time they admitted this, that in both these cases, the man must be resident in Derby at the time of the demand.

The counsel for the petitioner meant to contend, if it had been necessary, and reserved to themselves that power, that non-resident persons have an equal right; but the question could not be agitated in this petition, owing to the counsel for the sitting member admitting, that the twenty-six, who were all resident at the time of their demand, would turn the poll.

Mr. Bearcroft contended, that the twenty-six, whose votes he meant to establish, had an ante-

cedent right, either by birth or servitude; and that, before the election, they had demanded to be admitted in the regular manner by the persons, who, according to the constitution of the borough, are appointed to admit burgessees: and that they ought now to be considered as if they had been admitted, and that their votes should be added to the poll.

On the other side, the principle was admitted, but the fact of their having demanded their admission of the proper persons, or in a proper manner, was denied.

The counsel for the petitioner said, that by the express provision of the charter, the persons appointed to admit freemen, are the mayor and three aldermen; and that the persons, who had been refused, had demanded of the mayor and three aldermen to admit them.

On the part of Mr. Gisborne, it was denied, that this was the legal mode of admission, or that there was any provision to establish such mode in the charter.

The original charter being produced, this point was separately argued, and determined.

The words of the charter, upon which the argument was founded, are in the latter part of the charter, and are as follows:

“ Provided also, and we will, that every person
 “ from henceforth to be admitted into the free-
 “ dom of the borough aforesaid, before his ad-
 “ mission, shall take, do and subscribe the distinct
 “ oath last above-mentioned, as the declarations
 “ and subscriptions aforesaid, before the mayor and
 “ aldermen of the borough aforesaid for the time
 “ being, or four of them; to which said mayor
 “ and aldermen, or four of them, we do, by these
 “ presents, give and grant full power and authority
 “ to give and administer the aforesaid oaths.”

It

It was urged by the counsel for the sitting member, that a common-hall was the only legal mode of admission; that it had prevailed immemorially and uniformly down to the year 1772. This was not controverted by the counsel for the petitioner, who admitted the custom to have been as stated; but they said, that no custom could be good against the express words of a charter, whatever was the antiquity of it: that it had been so determined in the case of Helston; and that if the committee should be of opinion, that the clause in the charter gave the power to the mayor and three aldermen, no custom could take it away. And he likewise insisted, that if the committee should think the words of the charter sufficiently explicit, as to the mode of admission, the counsel on the other side could not be permitted to give any evidence, either of the usage or bye-laws, to contradict it. But that, if they should be of a contrary opinion, and although the sitting member's counsel should be allowed to prove, and should prove the regular mode of admission to be otherwise than before a mayor and three aldermen, he should still contend, that, under all the circumstances of the case, the application and demand of the rejected votes had been such, as ought to induce the committee to put them upon the poll.

The court being cleared, the committee deliberated for some time; and then, the counsel being called in, they were informed by the chairman, that the committee had come to the following resolution, viz.

Resolved, " That the clauses in the charter,
 " which have been produced to the committee,
 " have not so established the mode of admission
 " of

“of the freemen of this borough, as to exclude
“other evidence.”

*Adjourned 'till ten o'clock to-morrow morning
precisely.*

SECOND DAY.

Veneris 2^{do}. Die Februarii, 1776.

Committee on *Derby Election* proceed.

MR. Mansfield, for the sitting member, said, The other side ought to proceed to shew what has been done at Derby by those who offered to be admitted:—states the usage to be twenty in common-hall to admit; mayor, aldermen, brothers, and capital burgesses, or twenty of them to compose the hall.

Cited the bye-law again, and said, the practice had been, if claims were clear, to admit on the day pretensions were exhibited: down to 1772 none admitted but by the twenty in common-hall.

Mr. Bearcroft did not oblige the counsel for the sitting member to go into the usage of the borough, but admitted it to be, as they stated, down to the year 1772, at common-halls; and since the year 1772, before a mayor and three aldermen. This was agreed on both sides, and that it was a general error, which had prevailed in consequence of an opinion, which the corporation had taken upon the subject.

Here they read the bye-law of the tenth of December, 1743, in confirmation of the custom, which was admitted.

The words of the bye-law are :

“For the better regulation of the swearing and
“admitting of those, who shall for the future claim
“their

“ their freedoms or burgesfships, within this bo-
 “ rough ; and to prevent any impositions, that may
 “ be occasioned thereby, it is now ordered, that
 “ every person or persons, who shall or may claim
 “ any fuch right or freedom as aforesaid, do and
 “ shall, before they or any of them are or is ad-
 “ mitted into the same, at some common-hall to
 “ be held in and for the said borough, exhibit in
 “ writing their respective name and names, and how
 “ and in what manner they, or any of them, do
 “ severally claim and derive their respective rights
 “ to fuch freedoms or burgesfships, that the same,
 “ by a proper committee of this corporation, may
 “ be enquired into or examined ; and if found
 “ right and consistent with the laws, orders, and
 “ rules of this corporation, fuch person and persons
 “ shall and may be sworn and admitted a burgesf
 “ and burgesfes of this corporation, at the then
 “ next, or at some other fucceeding common-hall.”

Mr. Bearcroft likewise admitted, that the per-
 sons, who had applied, and had been rejected,
 had not applied to a common-hall, nor required
 that a common-hall should be called ; but that
 having applied to the mayor and three aldermen,
 according to what was universally understood to
 be the constitution of the borough at that time ;
 and having fo applied to the persons, who were at
 least the proper persons to administer the preli-
 minary oaths, without which they could not com-
 pleat their admission ; and having been promised
 their admission, and having been put off from
 day to day, and having been refused by the mayor,
 with a view to deprive them of their votes, as he
 knew them to be in the interest of Mr. Coke, all
 which would be proved, he would satisfy the com-
 mittee, after they should hear the evidence on the
 subject, that their votes ought to be allowed.

The

The counsel for the sitting member objected to any evidence to prove such facts, as the counsel on the other side had stated: they said, that (admitting for argument's sake the facts to be true) still they would be perfectly immaterial: that as the common-hall was now allowed to be the only legal meeting for the admission of burgessees, it would be a perfect loss of time to go into evidence, to shew applications to another sort of meeting, for what they had no right to do; and which, if they had done, would have been void; and would not have entitled the claimants either to exercise the right of voting, or any other franchise. The utmost, they said, which had ever been, or could be done, in cases of this sort, was, to allow the votes of persons, who, having clear titles to admission, had applied agreeable to the established law of the corporation, and had been refused. That, if a man proceeds in his conduct contrary to the rules, either of the general law of the land, or any particular local law, under which he acts, he must suffer for his ignorance; and cannot claim to be put in the same situation, as if he had known the law, and had acted agreeably to it. That there are not two more established maxims, than that ignorance of the law shall be no excuse for departing from it, and that every man shall be considered as acquainted with the law: and therefore, if he does not follow its directions, he shall not gain any advantage, to which, if he had followed them, he might have been entitled.

In answer to these, and many other arguments, it was contended, that, although there are many cases, where persons, applying in the precise and exact mode prescribed by law to be admitted to their franchise, and having been refused, have been

been considered, as if actually in possession of it; yet it does not follow from those cases, that all persons, who have not precisely followed the strict legal line, shall, in every instance, be considered as not entitled to the exercise of their franchise: that on the contrary, the principle of those cases extends much farther, being clearly this: that where persons, entitled to any right, do all in their power to obtain possession of it, and are prevented by the unfair partiality of another, they shall be permitted to exercise such right, and shall not suffer by the injustice, which was intended to be done to them: that the committee was a court of equity, as well as of law; and that when they considered, what was the universal opinion in this borough concerning the legal mode of admission, at the time when the persons in question made their application, they would remember two maxims, equally rational with those alluded to on the other side, and so well established, as to have become in a manner proverbial, viz. *Summum jus summa injuria & communis error facit jus*: that the last, at least, ought to weigh so far in the present case, as to excuse the claimants for having chosen a mode of application, which, although not agreeable to the constitution, was according to the sense of the whole corporation.

In short, the whole case, as afterwards proved, having been stated on the part of the petitioner, the arguments, which arose upon the facts, when proved, were in a great measure anticipated in this previous question, concerning the admissibility of evidence to establish those facts.

The court being cleared, after deliberation, the counsel were called in, and informed by the chairman of the following resolution, viz.

Resolved, "That the committee are of opinion,
C " that

“ that the counsel for the petitioner shall proceed
“ in his evidence.”

Upon this they went into evidence upon the whole of their case, which was taken down by the clerk, and is as follows :

EDWARD WILMOT, *Esq*; *sworn*.

Remember in January, 1775, going with the Petitioner, Sir Henry Harpur, and two more gentlemen (not sure who) to the mayor's house.

On our going in, I think we found only John Heath, brother to the mayor.

Mr. Coke said, he came to give him the trouble of admitting him to his freedom. The mayor very soon came in, and he said the same to the mayor, as he had to his brother. Civilities passed on both sides, and I think Mr. John Heath said, “ Had not you better be admitted or sworn on the “ hustings?” (or words to that effect) “ but if you “ had rather be admitted now, we will do what we “ can to accomodate you, or get more members,” or to that effect.

John Heath is an alderman, I believe.

The mayor said, he would send to Mr. Flint, or to Mr. Wylde, or Bingham: I don't recollect which, or whether both I don't recollect. I believe they are aldermen. They sent; and Flint and Joseph Bingham came. The mayor said “ Now, sir, we will swear you in.” They gave Mr. Coke the book, and I believe he paid fees: I think he laid down half a guinea, or offered it to the town-clerk. They did not begin to swear Mr. Coke: but Mr. Flint said, “ If we admit “ you, or swear you” (I don't know which), “ I “ apprehend there are a great many will insist on “ the same !”

Mr.

Mr. Coke said, 'tis true, there are. Upon which the mayor, or his brother, said, if that is the case, you must excuse our admitting or swearing you in now. Mr. Coke said, "Mr. Mayor, you must use your discretion, but I must desire you will call a meeting, or hall:" I don't know which word was used. The mayor said, "He had no objection in the world, and that he would endeavour to get a sufficient number by the afternoon." This was in the morning: little more passed but common civility.

I don't remember particularly the expression the mayor used: after the mayor came into the room, I don't recollect he went out whilst the conversation lasted.

In the afternoon, before we went, we received a message from the mayor, that he had got a sufficient number of aldermen to attend. He mentioned the hour: I think three; at the hall, in one of the rooms of the town-hall. I attended at the hour fixed upon: the mayor was then present.

[Looks at his minutes.]

At a court, held before Mr. Christopher Heath the mayor, Mr. Flint, Mr. Joseph Bingham, and Mr. Wylde, at the borough of Derby, January 5th, 1775, in the afternoon.—I recollect Mr. Alderman Edwards came in: I am told Bingham did not stay all the time.

The petitioner was not there.

Mr. Harrison, a surgeon in Derby, was with me. I went by desire of the petitioner. We intimated the occasion of our coming: told the mayor we came to see that proper tender was made by those who claimed their freedom, before any one was called upon to produce their claim.

Mr. Grainger came in, who asked what business any body had there, who were not of the corporation. I believe he is a member. Can't say I told him the occasion of our coming was to see that those who claimed made their tenders. He said, they who tendered themselves were the proper witnesses. I told him they certainly were not, and appealed to the town-clerk, as a man of candor. He said, they could not be the proper witnesses, and that we might stay. Mr. Grainger was a good deal in a passion. The mayor said, he did not know whether we ought or not to be here, but submitted to the town-clerk.

Mr. Grainger said, if he had any command there, we should not stay there, or words to that import.

We produced several claims: several came in and tendered themselves, viz.

William Lacey, son of William Lacey, produced his indentures, dated in 1757, and claimed his freedom by apprenticeship. Offered at the poll.

Charles Houghton, claimed by birth, and produced his certificate. Offered to vote.

William Sale, a baker, claimed by indenture. Offered to vote.

Samuel Cook, or Cock, claimed by birth, and produced his certificate. Offered to vote.

William Roberts, claimed by birth, and produced his certificate. Offered.

James Pratt, claimed by birth. Offered to vote.

William Elcock, claimed by indenture. Offered.

William Cook, claimed by birth. Offered.

James Brewer, by birth. Offered.

Robert Dudley, by ditto. Offered.

John Wedgewood, by indenture. Offered.

John Sterndale, by birth. Offered.

Joseph Clay, by indenture. Offered.

William

William Bancroft, by birth. Offered.

William Hopkins, by birth and indentures. Offered.

Samuel Roberts, by birth. Offered.

Thomas Bilson, by indenture.

Charles Clarke, by ditto.

Thomas Hancock, by ditto. Offered.

Edward Cockayne, by birth.

Richard Coke, by indenture.

Richard Lovegrove, by ditto.

Thomas Jones, by ditto.

Philip Moller, by birth. Offered.

Isaac Towndrow, by ditto.

William Maddox, by indenture.

On the ninth of January, Richard Bridge tendered by birth.

Some of these people asked what was to be done with their certificates and indentures : I told them they might be very well assured they would be very safe in the mayor's hands ; that he might look into them, and be satisfied of their legality.

They were put into a bundle, and then into the hands of the mayor, or town-clerk.

What was to be done with them ?

They were to remain in the mayor's hands, and he said he would look into them between that and Monday.

On Monday the ninth, the mayor came according to his promise.

The court held before him, Mr. Crompton, Mr. Flint, Mr. Joseph Bingham. Several more tendered then.

Did any of those who tendered on the fifth attend ?

I don't know.

[Looks on a list.]

Did any of the twenty-six renew their claims on the ninth ?

Lacey and Houghton were there in the room. They admitted some that day who had tendered: none of the twenty-six.

Application was made to admit several: the mayor and Mr. Crompton said, "It is late in the morning, and we have other business to do; and therefore we will give you our honours, that we will meet again on the next Monday morning, and swear in, or admit, all those who shall make out their rights—

[Adjourned for five minutes.—Returned again.]

"And he desired they might meet an hour sooner than usual, because there would be a good many, and it would take up a great deal of time." They fixed ten, and the usual hour is eleven.

We then left the place.

On the 16th I went to attend, pursuant to the appointment. The mayor did not come at ten or eleven. I did not see any one there. I saw the mayor before eleven, or about eleven, in the market-place. Can't recollect in whose company. Did not see him that day in Gisborne's company. I asked him, if he could not come to the hall; and he said, no, he should not, for he found he had been either deceived or misled about some of the claims the time before, and that he was come to a resolution not to admit or swear any more before the election, or before the election was over. I am positive of it.

Cross Examination.

I don't know any thing of the constitution of the borough: from the mayor's words, I presume the mayor and three aldermen were thought a proper meeting.

When claims were tendered, I don't know if
any

any one attended to prove the execution of the indentures: I did not hear of any one offering as witnesses, or attending as such. I don't know if any offered to prove the indentures.

I mean by a certificate, a copy of the register. I don't mean any other evidence was offered of births than those certificates.

There was no other evidence but the certificate, nor any witnesses to my knowledge. I don't know if any other witnesses were ready or not to substantiate the claims, nor ever heard.

There was no evidence offered to prove service under indentures: if there had, I suppose I should have noted it.

I never heard that any of those who had applied had imposed on the mayor.

When indentures and certificates were produced, the mayor did not express any doubts, or ask for any other evidence; nor made any objection to the evidence produced, nor expressed any doubts or difficulties.

On the 16th other claimants attended.

[*Withdrew.*

Adjourned 'till ten o'clock to-morrow precisely.

THIRD

THIRD DAY.

Sabatti 3^d. Die Februarii, 1776.

Committee on *Derby* Election proceed.

MR. Balguy proceeds in his evidence for the petitioner.

JOHN HARRISON, *Surgeon, sworn.*

Asked if he was a subscriber ?

He said he was, but struck his name out, because he thought he might be called on as a witness : paid nothing towards it, nor does he think himself bound in honor to pay any thing.

On the fifth of January, 1775, in the afternoon, there were present in the town-hall, the mayor, Mr. Henry Flint, Mr. Alderman Wylde, and Mr. Edwards. Mr. Joseph Bingham was there a very short time, and went away.

Mr. Wilmot and I, went to be witnesses to those who had tendered for their freedoms. In a very short time came in Mr. Grainger, the corporation steward, and Mr. Flint, jun. Mr. Grainger asked Wilmot and myself, what business we had there ? I told him we came to be witnesses to the burgesses tendering for their freedoms. He answered, we had no business there : that it was not customary to have any one there but themselves, and they should have no other evidence but the corporation books.

Mr. Wilmot asked him, how a mandamus could be supported, if there was no witnesses to support the tender ; and referred himself to the candor of the town-clerk, whether it was not necessary to have witnesses.

Mr.

Mr. Lockett, the town-clerk, replied, undoubtedly it was.

Mr. Grainger then left the room in a good deal of passion, and Mr. Mayor then agreed to take the tenders of different people, viz.

William Lacey, by indentures he produced, and both parts were in it.

Charles Houghton, by birth. Produced certificate of his baptism.

William Sale, by indenture. Produced two parts.

Samuel Cock, produced his certificate. By birth.

William Roberts, by ditto, ditto.

James Pratt, by ditto, ditto.

William Elcock, by indenture; a charity indenture, and only one part produced.

William Cook, by birth. Produced his certificate.

James Brewer, ditto, ditto.

John Wedgewood, by indenture. Produced two parts.

John Sterndale, by ditto. Produced an indenture; can't say whether two parts, and delivered to the mayor.

Joseph Clay, by ditto. Produced one part.

William Bancroft, by birth. Produced his certificate.

William Hopkins, by indenture. Produced two parts.

Samuel Roberts, by birth. Produced his certificate.

William Kirkland, by birth. Produced his certificate.

Thomas Bilson, by indenture. Produced one part, signed by himself.

Charles Clarke, by ditto. Produced two parts.

D

Thomas

Thomas Hancock, by ditto. Produced one part, signed by both parties.

Edward Cockayne, by birth. Produced his certificate.

Richard Coke, by indenture. Produced two parts.

Richard Lovegrove, by ditto, ditto.

Thomas Jones, by ditto. Produced an indenture, and turn-over.

Philip Meller, by birth. Produced no certificate, his father being a dissenter: he found a memorandum in the register of St. Michael's afterwards of his birth, but not of his baptism.

Isaac Towndrow, by birth. Produced his certificate.

William Maddox, by indenture. Produced one part.

On the ninth, Richard Bridge, tendered by birth. Produced his certificate.

On the fifth, Mr. Mayor desired the indentures and certificates might be left with him. Some of the burgeses made some objections to it, doubting the having them returned.

Mr. Wilmot and I engaged for the safe return of them from the mayor. The mayor declared, he desired to have them, to enquire into the claims; and wanted to appoint a future day for their admission: that they should have a meeting again on the Monday following, and desired they would attend again.

On the ninth, I attended again with them at that time. Several of the people claimed.

Mr. Wilmot, and John Harrison, attorney, were there with me at that time. Six were sworn, who tendered about a month before.

The Mayor, Mr. Crompton, Mr. Henry Flint, and Mr. Bingham were present.

Mr.

Mr. Lacey and Mr. Houghton were in the room, and desired they might be admitted. The others I have named were there, attending at the outside of the door. The mayor said he had some particular business to transact that morning, which made it inconvenient to admit them then, and desired they would attend again the Monday following; and that Mr. Wilmot, and Mr. Harrison, and I would attend with them: he desired we would fix the time of the morning ourselves, and wished it to be more early, in order to go through the business of the day. Houghton and Lacey said it was hard there should be so much trouble in coming again. Ten o'clock was the hour fixed.

Mr. Mayor and Mr. Crompton then said to Houghton and Lacey, "Gentlemen, you may depend upon it you shall all be admitted, who have right, on Monday next: we give you our honors you shall be admitted." They still were pressing to be admitted at that time, upon which the mayor and Crompton laid their hands upon their breasts, and said, "Gentlemen, do you doubt our honors? you shall be admitted."

Mr. Wilmot, and John Harrison, attorney, then left the room. As I was going out, with the door in my hand, the mayor again called to me, and said, "We shall now have proper time to examine into the claims; and those who we find have a right, shall be properly admitted on Monday next:"—on which we parted.

All the rest were within the hall, but not within the jury-room; and they were all desirous of coming into the jury-room, but I desired they would not.

I did not attend on the 16th: I was going, but saw Mr. Mayor on his canvass with Mr. Gifborne. I saw him in different parts of the town

about ten or eleven o'clock. I saw him canvass with Gisborne the Tuesday also. The canvass begun on Monday.

Cross Examination.

The certificates were signed by the persons who kept the register: there was no evidence besides. They look at the corporation book to see if the father was admitted:—there was no evidence of service but the indentures.

I believe there were no witnesses present to prove the execution.

They wanted to be admitted on the ninth by the persons present—Had no idea of any other matter.

Monday is the meeting of the justices: the mayor and four senior aldermen are the justices. I suppose every one apprehended they had a right to admit them: I had no doubt about it myself, nor I believe any one else.

When we produced the proofs of claim, no other evidence was required, nor was any difficulty mentioned, or any doubt suggested.

Of the six who were admitted, no other evidence was required.

What oaths were administered?

The oaths of allegiance and supremacy, and some other oaths I believe: I am not sure.

I am sure the mayor made use of the word *properly*, to me, when I had the door in my hand.

The six had made their applications before. Some of them polled at the election, and no objection was made to them. The general opinion in Derby was, that it was by the mayor and three alder-

aldermen: several of their own body were admitted no other ways.

I am informed, that about 1772, they took counsel's opinion, and found that the mayor and three aldermen had a right of admitting.

The twenty-one who were afterwards admitted, did not apply for a common-hall. The mayor advertised it, about the day of the election, or thereabouts.

If others made application when the six were admitted?

I don't know.

[*Withdrew.*]

Mr. JOHN HARRISON, Attorney, sworn.

I attended at the town-hall, 9th of January, 1775, with Mr. Wilmot, and Mr. Harrison, surgeon.

The Mayor, Crompton, Bingham, and Flint were present.

There came in several, who claimed to be admitted to their freedom; particularly Bridges, who claimed by birth, and produced the certificate of his baptism, signed by the person who kept the register, and left with the mayor.

Others attended to claim, not of the twenty-six; they produced some of them their indentures or certificates: six came in, and said, they had tendered a month before, and they were admitted.

Afterwards Lacey and Houghton came in, and said, they had tendered on the fifth, and as the mayor had sworn others on that morning, they desired that they might be sworn.

The mayor said, it was then late in the morning, and they had other business to go about; but if they would come on the Monday following, he would

would in the mean time examine the claims of all that had tendered, and every man that had a right, should be admitted.

The mayor and Crompton afterwards said, "We give you our honors, every one shall be "admitted who hath a right." This was before twelve o'clock.

Lacey or Houghton said, he had better swear them then, and not give them the trouble of coming again; and Mr. Harrison the surgeon, and Mr. Wilmot, desired they might be admitted: and the mayor and Crompton clapt their hands on their breasts, and said, "Do you doubt our honors?" The mayor appointed ten o'clock to meet, that every one might be admitted.

Samuel Cock, Robert Dudley, Samuel Roberts, William Roberts, William Kirkland, William Cook, Edward Cockayne, William Hopkins, John Wedgewood, Philip Meller, John Sterndale, Richard Lovegrove, Joseph Clay, William Elcock, William Bancroft, James Pratt, James Brewer, William Sale, Charles Clarke, Thomas Jones, Thomas Bilson, Thomas Hancock, William Maddox, were all waiting about the hall, to be admitted.

When I went out, I told them what Mr. Mayor and Mr. Crompton had said, and promised; and I desired them to attend accordingly.

On the 16th, I sent round, to desire these men would come at ten: I believe they were all there ready.

I waited half an hour, and was told the mayor was canvassing with Mr. Gisborne in the Fullstreet, and found him there canvassing with Mr. Gisborne, and some of the Lords Cavendish; one or two, am not positive which. I made a motion to the mayor, and he crossed the street to me: I told

told him the time he had appointed for swearing the burgesses was come, and asked how soon he intended to go to the hall. He told me he should go to the hall at eleven o'clock, about some other business, but he should not swear any burgesses that day.

I asked him if he remembered the promise he had made on the preceding Monday: he said he did, but he had been deceived in swearing some of the six, who were sworn the 9th, and had no right; I said, I knew nothing of their rights, and that it was no excuse for his not going to the hall that morning, and swearing the others: I told him, that he had said he would examine into the rights in the course of the week; and if he had done that, he could not be deceived in them: he said it did not signify, for that he could not, or would not (I don't know which) swear any burgesses before the election.

I told the people who were waiting, that they need not stay any longer, for the mayor told me he could not swear them.

What's the general opinion in Derby, since 1772, of who have a right of admitting?

Generally understood that the mayor and three aldermen have that right.

Cross Examination.

When the mayor said they should be admitted, I have no doubt but it was meant, by the mayor and three aldermen.

The meeting for justice business is on every Monday.—I am told, that at the time the twenty-six applied, a great number more did: I think about sixty in all.

[*Withdrew.*

Mr.

Mr. Alderman THOMAS EATON sworn.

I live at Derby; have known Derby all my life: am about sixty years of age. Have been conversant with the business of the corporation about twenty-eight or twenty-nine years, till the last three years.

I have been a member of the corporation all the time I have mentioned — Have not attended the last three years; before that, I generally attended at the admission of freedoms, if I was in the town.

What was the method?

If they claim by birth, they always brought a copy of their register; or, if dissenters, they generally brought a book, wherein their births were entered by their parents.

The copy of the register was signed by the person who kept the register. I never knew it any other way — No other evidence required or received.

If by service, they always brought their indentures, and sometimes the masters came with them. I never heard, till lately, it was usual to produce the subscribing witnesses: it never was whilst I attended. I believe it was at or since the last election. — They frequently produced both parts of the indentures, and sometimes the master's testimony. Sometimes they were objected, because the stamp-duty was not paid: sometimes the service was so well known, by persons present, that they required no other evidence but the indenture.

Cross Examination.

When I was first acquainted with Derby, it was universally understood, that the common-hall, and they only, had a right to admit.

Name

Name the manner before yourself, who, with three aldermen, undertook to admit?

I can't name any one. I have admitted several alone, by my own authority, at my own house: I can't say what number: they none of them polled at elections.

Perhaps I may have admitted thirty or forty by myself; perhaps more: I did not get a pin by it.

The people got the money again. I returned it when they call'd for it: — they came again before the election; some after my mayoralty—the money was in a window to be ready.

Several claimed to be admitted, and brought an act of parliament; and the town-clerk, Mr. Lockett, said, that by the act they must be sworn in by the proper officer, and it might be without a common-hall, or they might bring a mandamus.

I did not read the act; there had never any been admitted before that, but at a common-hall.

Who of those you admitted by yourself were refused at the election, and at what election was it?

I don't know that they were rejected, or attempted to be polled under such swearing.

Several gentlemen of the corporation told them their votes would not be admitted, and therefore they came to have their money again. I don't know who advised them; I believe they all came for their money again. Many of them said nothing, but desired I would give them their money again. I hear they have voted since, but not under that swearing. — One has: Cook, a lapidary.

I have not seen the corporation book since I admitted in the manner above.

When I was mayor, I had neither the charter, seal, or corporation book.

E

I be-

I believe two sons of Yeomans the butcher, are on the books: (it appears by the poll, that they both voted at this election.)

On admission by indentures, if both parts were produced, and the king's duty paid, they were not refused: if they were refused, the reason was wrote in the margin: if any thing was doubtful, the indenture was left to be enquired into.

Certificates were signed by the person who took it—Sufficient without any other evidence. It was generally known to some of the corporation, that the person was the son of such-a-one mentioned in the certificates, and no other evidence required.

Who were to inquire into doubtful things?

Mr. Grainger, or some other member of the corporation.

The admission by me was since that act in 1772.

I never heard the corporation approved or disapproved of it.

I never admitted with the mayor and three aldermen: I believe Mr. Bakewell found out the method.—I don't know who consulted him on it.

I have been at common-halls before my mayoralty at admissions. My mayoralty commenced at Michaelmas 1771.

[Withdrew.]

*Mr. WILLIAM MERRILL LOCKETT, Town-Clerk,
sworn.*

I have been town-clerk since May 30, 1765.—Remember when Mr. Eaton was mayor.

I am an attorney: during his mayoralty a practice prevailed of admitting freemen before the mayor alone: that was the only year I remember it;—that was not by any advice of mine.

I be-

I believe Eaton first mentioned it to me: it was mentioned, and generally in the hall. I never told him there was an act of parliament for it; nor I never heard there was—I don't know where this had its origin—I always disapproved of it when it was mentioned. I don't recollect any reason given for it; it seemed a strange thing to me, and I always said so.—I believe an opinion of counsel was taken upon it in Eaton's mayoralty, before he admitted, I believe—I don't know what was the ground for it, and it was notoriously known to be wrong; and heard the people applied for their money again, and no one since ever thought of any such thing.

These admissions were not entered in any book belonging to the corporation, to my knowledge, or copies of the freedom delivered out.

From October, 1772, it was understood that the right of admission was in the mayor and three aldermen, and they did admit accordingly; and they were so, except in cases of honorary freemen.

It was always understood they must be admitted in common-hall: I was generally present at claims.

Certificates of entry in the register was to shew the person was of age: that was the proof, and generally understood to be sufficient: if any doubt arose, they took time to enquire within a week, more or less; if doubts arose, they made an inquiry in the town.

Whether in 99 times out of 100 the certificate of baptism was not deemed sufficient?

They used to turn to the book, to see if the father was admitted at the son's birth: the certificate was generally understood to be sufficient.

By servitude, both indentures generally were produced, if there were two parts, and they were taken to be compleat evidence, if no reason to doubt. They

They sometimes called for subscribing witnesses, if any doubt arose.

Cross Examination.

The practice used to be to admit in common-hall.

I never told Mr. Eaton he might singly, as mayor of Derby, swear burgessees—I know the contrary: he might mistake the matter—I said, that by the late act, that if a person was not admitted by the proper officer within the time, a mandamus would lie.

Mr. Eaton mistook the act. I never gave the direction, and was surprised, and mentioned the impropriety to several next to him.

I did not point out the new mode of admitting by mayor and three aldermen. Common-halls used to be held as occasion required. No stated times; as business required: sometimes three or four in a year. I question if one was held in Mr. Eaton's time.

When persons claim, if doubts arise, it is put off 'till the doubts are cleared. I believe no entry of postponing in the books.

[Corporation books produced by him:—the minute book and ledger.]

A common-hall in 1775, for returning Wenman Coke, Esqr. member.

Nineteenth October 1772, a common-hall.

None in Mr. Eaton's year, but that for returning a member.

I don't know who Mr. Eaton admitted by himself, nor what number.

I was present at the meeting of the fifth of January, not the ninth.

In the afternoon of the fifth of January, how many appeared?

I can't

I can't tell; the book will speak for itself:—the list will shew. I think I was present.

[The book produced.]

List counted by him.] Ninety-two, if I count right, both on the fifth and on the ninth: some one day, some the other.

Of the 92, how many have been admitted since the election?

[Another book produced.]

In the hall-book, copied from the minute-book, twenty-seven at both halls, February the first and fifteenth. Both halls consisted of twenty members.

The rest were rejected for various reasons.

Did not the ninety-two tender to be admitted on the 1st, or 15th?

I imagine so, or how could they be rejected?

The number rejected at those two halls appeared by the book to be thirty-eight, if I have reckoned right.

It is possible Mr. Eaton mistook me: I don't think he would come and swear to false facts.

Were not many of the thirty-eight rejected because they were not resident in Derby?

[Mr. Bearcroft said, about twelve]

During the time I have been town-clerk, it was understood non-residents were not to be admitted sometimes; often elected honorary.

Since 1772, 'till 1st of February 1775, have any been admitted at common-hall?

(This question to be answered on Monday.)

The mode of calling common-hall, is by the mayor, who sends to the town-clerk: if any wish to have it, they apply. Summons for calling the common-hall is three days; the day of delivery included.

In

In the mayoralty of Mr. Eaton, the old officers served again.

[*Withdrew.*]

JOHN COOK *sworn,—to shew agency of mayor.*

I remember the election; was in the mayor's company about a week before the election, at the Queen's-head, in Derby, in Saint Mary Gate.

He came into the brewhouse to me, and asked me, if I would promise him my vote for Mr. Gisborne. I told him I did not know; that I must study my own interest, as well as the gentlemen did theirs. He asked me why I would not give my vote for Mr. Gisborne. I did not know I had any reason to do it, by reason they had never thought of my father, nor me, or any of the family in the charity money:—that was my objection. He told me after that, he could not promise me any of the town's money, but he would assure me, that after the election was over there would be some money to be disposed of—they would certainly think of those who served them, and not those who went against them, and would have me study my own interest. I told him I did not know I should vote for Mr. Gisborne.

I know Mr. Grainger:—if any one wants to be sworn a burghers, they apply to him: they send them to him.—I applied to Mr. Mayor for my brother, and he said I must apply to Grainger. I sent my brother in to demand his freedom: they refused him, and I went in, and I said, he should be sworn in the next day. I went to Mr. Grainger's in Christmas week; he said, your brother shall be sworn, and if you know of any others who will serve us, we will swear some few who would serve us, but not the rest: he said, mind
and

and be steady to us, and you will be on the right side. I said, my brother will and all, if he gets sworn—yes, he says, he will:—and be steady to us, says he, this time, and we never shall ask the burgesses of Derby after this time, but merely to pass a compliment on them.

Why not, said I?

Says he, we have Peak burgesses enough to overcome Derby—I mean honorary burgesses.—I saw Grainger canvass with Mr. Gisborne frequently as active as any others: he asked me for my vote, and Mr. Gisborne came up to me.

Cross Examination.

The landlord and landlady were by, at the Queen's-head; they all three stood by me in the brewhouse, and heard the conversation with the mayor. I had no inclination to vote for Mr. Gisborne, I was for free and voluntarily.

Did you rest satisfied, when he said money was to be given away to Mr. Gisborne's voters?

I told him I did not know I should vote for Mr. Gisborne, and so we parted.

I had no conversation with Mr. Coke, or any of his friends or agents, touching receiving any money for my vote.

I know Wilkine's wife, at the Minor's Arms; never talked with her about Mr. Coke, or any thing about the election, or my vote, or any expectation I had for my vote.

I applied to Mr. Flint and Grainger, about having my brother sworn:—I never named any one's voting for Mr. Gisborne, I never desired any one to be sworn, assigning as a reason, that they should vote for Mr. Gisborne: I never spoke to them
together

together about my brother, or any one's being sworn.

Did you never tell Mr. Grainger, that if your brother could be sworn, you or he would vote for Mr. Gisborne?

No, I never said any such thing.

No one was by, when Mr. Grainger said it was the last time they should apply to the burgessees of Derby.

The money I mentioned is lent out in sums to people of business, without interest.

When you was told of money to be distributed after the election, what did you understand?

That it was the charity money.

[Withdrew.]

WILLIAM LEPER SMITH *sworn.*

Desired to produce a paper signed by the mayor—a petition to Mr. Gisborne to become a candidate.—Mr. Gisborne allowed it to be so, but he had it not with him: said it was under three locks and three keys.

Mr. Lee says the import was desiring Mr. Gisborne to stand a candidate for Derby.

[Witness withdrew.]

Mr. John Harrison, attorney, delivers in the indentures—fourteen: some duplicates.

Thomas Bilson's indenture, dated in 1761, read.

ROBERT CAMPION *sworn.*

[Looks at the indenture.] It is my hand-writing, the witnessing.—I was an apprentice with the master

master.—Bilson was a poor boy, not put out by the parish.

I am thirty-two years old, I never attended any where else. Parr, the other witness, is dead.

[*Withdrew.*]

Richard Coke's indenture, dated 11th May, 1739, proves itself.

Joseph Clay, 10th October, 1759.

Mr. John Harrison, attorney, produceth the certificate of the burial of John Hape, the only subscribing witness to the indenture.

Mr. RICHARD WHILBY, to prove the hand-writing of John Hape, sworn.

Shewn the indenture.] It is Hape's writing.

Cross Examination. To Mr. Harrison.

I never was called on to prove this elsewhere; it has been called for some where else. Clay was admitted after the election.

The indentures were there all regularly proved.

[*Withdrew.*]

Charles Clark's indenture, dated 4th May, 1774, proves itself.

William Elcock's indenture, dated 6th March, 1753.

Mr. William Lockett, town-clerk, says it is his writing, as subscribing witness.

[*Withdrew.*]

William Hopkins's indenture, dated 2d November, 1757.

SAMUEL CONGREVE sworn.

I was witness; I filled up the indenture, and executed

cuted it as witness: I proved it before the common-hall.

[*Withdrew.*]

Thomas Jones's indenture.

CHRISTOPHER HEATH, *the Mayor, sworn.*

Had notice to produce it.] I have looked, but don't find that I had it.

I delivered all that were called for: I have all the other, and certificates, in my hand now.

Mr. Lee. As to the testimony of John Cook?

I don't know the John Cook, who was examined just now, personally: I recollect him; I believe I was at the Queen's-head at the time he mentions.

He was talking about voting, and town's money: I made no promise to him, or said, as I remember, any such words as after the election there would be money, and we should remember our friends: if I had said any such thing, I should have remembered it.

So many coming to claim, put me on my guard, and was a reason why we put off the admitting to consider.

I thought it was right to call a common-hall.

On the 9th of January, we were at the hall, I and some aldermen; a number of people came to tender themselves to be admitted then, as well as the 5th.

Some of the petitioner's friends were there on the 9th, and urged it very much to admit and swear several who had tendered themselves: we had not made the proper inquiry into the legality of their claims.

Sundry of Mr. Coke's friends said, they were good burgessees, and had a right to be admitted:

I took

I took their words, and the six were sworn that day.

It was afterwards found out, on inquiring, that we had been imposed on, and that was the motive only for not meeting on the 16th, and going on as we had promised we would have done.

Several of Mr. Gisborne's friends afterwards and before the election frequently came; and my general answer was, that if any were admitted on the eve of the election, it might be thought partial.

Several sent me word, if I would admit them, they would vote for Mr. Gisborne; my general answer was, I did not chuse to admit any, for I thought it wrong.

If there had been no mistake about the six, I would not have admitted any more without calling a common-hall, to take their sense, because such a number of people came on the 5th and 9th to tender themselves, was very extraordinary, and I thought I ought to have the assistance of a common-hall.

The imposition put upon us on the 6th, confirmed in my mind that we were liable to be further imposed upon.

Cross Examination.

I do recollect that I had some conversation at the house, where John Cook was, about town's money.

I do not recollect what passed between us two:—I won't pretend to say what passed with him about money.

I am a banker. Cook was not my tenant, nor had I any conversation with him about his owing me any thing: if I said any thing to him about money, it must be the town's money.

There is Sir Thomas White's charity given promiscuously to several people.—I don't recollect what part of his evidence was true, or how much false.

When did you make up your mind, that you would not admit any more, lest improper people should be admitted?

As soon as I understood we were imposed on, it struck me we had done wrong.

I know Mrs. Howe.

Did you not on Sunday, the 15th of January, tell her you would go to the hall the 16th, and admit those who had applied?

I don't recollect I did, or that I saw her that day.

I don't recollect I saw that afternoon any of the Duke of Devonshire's uncles; I remember I saw them, but at what day, I don't recollect, or whether they came to Derby that afternoon.

I saw them the 16th, and might on the 15th: don't recollect any thing particular. I saw one or other very frequently within the *three* weeks before the poll: don't recollect any particular conversation with them.

I dare say we might have conversation about the persons offered to be admitted.

I dare say they would have thought it very odd to have had them admitted.

Will you take upon you to say, that some or one of the uncles did not recommend that those people should not be admitted?

I don't recollect that they did.

Will you be positive that none of them did?

I can't remember it.

We were together, and I imagine we talked about the election. I conversed with them frequently about the election, amongst other things. We had

had no conversation about the Peak voters: probably there might be some such conversation, that if some of those people voted for Mr. Gilborne, it might endanger the election.

Messages were sent to me, that if I would swear certain people, they would vote for Mr. Gilborne.

Mr. Flint was one who brought the messages: the persons so applied for I do not know their names. It did strike me, that though they might promise to vote for Mr. Gilborne, yet they might not.

I know Mr. Ayton.

I don't recollect any conversation about the people applying, or saying there was no knowing people by their faces, and therefore it was right to refuse them.

[He delivers in the parcel of indentures, &c. in his hands.]

I know not the number of persons applying to be admitted on the 9th.

They were put down in a book.

On more mature deliberation, after I had promised to swear, I apprehended there might be danger, as the town was in confusion, and we had been imposed on before. I might change my opinion the day I said, "On my honor." I did not communicate to the tendering burgesses my not meaning to fulfil my promise.

I did not think it worth while to say any thing about it.

[Withdraw]

Adjourned to Monday, ten o'clock.

FOURTH

FOURTH DAY.

Lunæ 5^o Die Februarii, 1776.

Committee on *Derby* Election proceed.

Mr. CHRISTOPHER HEATH, *sworn by the desire of the court.*

Court. WAS any person that applied admitted on the 9th.

Yes, six; I don't know that any others made good their claims.

Did you reject any upon the 9th, upon deficiency of claim.

Yes; some were upon their claims not being made good:—I don't recollect any particular name, there were such numbers.

I understood some were waiting to lay in their claims.

We were prevailed upon, by the friends of Mr. Coke, to swear the six.

We did not enter into the claims: the reason we did not admit now, was that the person who usually attended was not there.

Did you enter into the examination of any other claims than the six mentioned?

I think we did not.

When you admitted the six, upon what proof did you admit them?

They brought testimony of their birth and servitude undoubtedly.

Was that the proof you admitted them on?

Doctor Harrison said, you may be sure they have a right, or words to that purpose. They brought

brought indentures and certificates as proofs of their right.

Was any other required ?

There were doubts ; but upon Mr. Harrison's speaking, we admitted them : we never admit any other person without producing the indenture or certificate.

If people are satisfied with respect to their serving their time, or of their birth, they were admitted.

Did any others apply to be admitted that day ?

I think there was : we did not enter into the examination of any other rights, because we were not prepared with persons to assist us.

We promised on the 9th we would meet on the 16th, to examine any other future claims, and those that were good should be admitted. We did not go to the hall on the 16th : the reason we did not, was, we were imposed upon by some of the six we had admitted before, and there was such confusion.

I was canvassing two or three times. Upon the 9th I was told, as we came out of the hall, that we had been imposed upon.

I have often attended swearing in burgesses.

Was it necessary that they should produce subscribing witnesses ?

It was not always necessary, provided we were satisfied of the persons who brought them.

Was it a rule on the 1st of February, that every person should produce a subscribing witness ?

We did insist upon it on that day ; before that time we had not insisted upon it so strictly : it was never insisted on unless a doubt arose. We were more strict then than before.

Was there not a counsel present on the 1st of February ?

Yes ;

Yes, I applied to him to know what steps were necessary.

Did he give it as his opinion, he knew of no proofs sufficient, unless that step was taken?

He did.

We considered, that we ought to have the best assistance we could; and I called upon the counsel to assist me for my own safety.

What was the nature of the impositions on the 6th.

It was cleared up, that two of the three were not resident. I don't know whether any of the six polled.

If the impositions had not happened on the 9th, we should have met on the 16th.

Did you make any inquiry into the claims?

We made a small progress in examining the claims on the 3d.

Why did not you appoint a day, between the 16th, and the day of election, to examine claims?

The town was in a tumult, and we were attended by such numbers of people, that we were apprehensive they might mob us; we expected it from Mr. Coke's party.

If we had gone to have sworn burgessees, and had not admitted every person who had, or had not a right, we should have had a riot.

When was the resolution formed of altering the mode of admission?

It was my desire to have a hall called to alter it to the old mode: I think it was before the 16th. I might mention it to some of the aldermen.

Did you not call a meeting upon it?

No; it was upon my own head, because I thought it the best way of proceeding: I looked upon

upon it we would admit at common-hall, provided people made out their claims.

Did you call a hall without any agreement, that it might be so?

Yes.

The counsel's name was Mr. Bakewell: I paid him for what he did for me. I did not pay it out of my own money.

Mr. Bateman paid me: I believe it was not Mr. Gisborne's money. I believe Mr. Bateman was paid by Mr. Wenman Coke; he was one of Mr. Gisborne's agents.

Mr. Bakewell was my counsel at the election: I did not pay him out of my own pocket. Mr. Bateman paid me. I don't know it was the corporation money.

Did not Mr. Grainger, the corporation steward, pay Mr. Bakewell, the charge of attending at the common-hall, the 1st of February?

I think it was.

Was it paid on the corporation account?

It was.

Was it discovered, before the election, that the mayor and three aldermen had not a power to admit freemen?

It was not discovered or suspected before the election:—it was not a reason for not admitting them on the 16th.

There might be 20, 30, or 40, that pressed to be admitted on the 9th, in the jury-room. I can't say exactly how many; there might be several in the jury-room that were not claimants.

Did Lacey and Houghton apply to be admitted?

Yes.

Why did you refuse them?

G We

We told them, we should meet on the 16th: we were in confusion and hurry.

Did you meet with any interruption on your canvass?

There were shouts.

Did you apprehend violence or insult on the 16th, if you had met?

Yes.

I met with no personal insult on the canvass: we did apprehend we should have been insulted.

Do you imagine Mr. Coke's friends would have been offended, if you had called a common-hall on the 16th.

I don't think they would.—I expected the insult from Mr. Coke's friends.

Did it appear to you, before the election, that you had been deceived?

Several people said we had been imposed upon:—it was mentioned, that two of them were not resident.

As mayor, do you think yourself obliged to call a common-hall whenever required?

No, not by any person: we generally call a hall when most convenient to us.

Was Grainger the person that said you had been deceived in some of the six?

I don't recollect it was: I think Mr. Flint was one that mentioned it.

Did any of the persons say, that those persons would vote for Mr. Coke?

No.

Upon the 9th, after these persons were admitted, I was told, going down stairs, that we had been imposed upon.

[*Withdrew.*]

As to the indenture of Thomas Jones, which was lost, dated 1725, for seven years—Fact admitted.

As

As to Lacey's indenture, dated 29th September, 1757—

RICHARD NOTON *sworn.*

Indenture shewn him.] It is my hand-writing: I was the witness.

[*Withdrew.*

As to Richard Lovegrove's indenture, dated 29th September, 1727—Proves itself.

As to William Maddox's indenture—Fact admitted.

As to John Sterndale's indenture—Fact admitted.

As to William Sale's indenture, dated 14th September, 1727—Proves itself.

As to John Wedgewood's indenture, dated 21st August, 1767—Fact admitted.

As to Thomas Hancock's indenture, dated 5th February, 1765—

As to Bilson, Clarke, Hancock, Jones, Maddox and Sale, who were not admitted—

Mr. JOHN HARRISON, Attorney, sworn.

I attended at the common-hall, on the 1st of February, 1775, and Bilson came: his indenture was produced to the mayor.

There had been an indorsement on the back, that the master should allow him for his board, and for that reason they rejected him.—He offered himself.

His master was dead, I believe.

The mayor said it was not a regular indenture.

Was you prepared to prove the death of the master?

G 2

I don't

I don't know of any proof that he was dead : I believe he is dead. No evidence was offered of the service on the 1st of February.

[*Withdrew.*

ROBERT CAMPION *called.—Sworn.*

I know Thomas Bilson; he was apprentice to Mr. Saxelbye: I served most part of my time with him.

Cross Examination.

I am thirty-two years old: I went apprentice in 1760; I was for seven years. Bilson served all his time with Mr. Saxelbye; I take upon myself to swear it.

[*Withdrew.*

As to Clarke's service—

Mr. JOHN HARRISON, *Surgeon, sworn.*

I know Charles Clarke; he was apprentice to James Lane Baker, a butcher:—I remember him in his apprenticeship: I believe he served his time out. His master is dead. He was apprentice when I left Derby, and when I came back, which was about a year, he was with Baker.

[*Withdrew.*

As to Hancock's service—

THOMAS HANCOCK *sworn.*

I know Thomas Hancock; he was apprentice to George Goodman, myself, and my brother: he served his time.

As

As to Maddox's service—

Same Witness.

I know William Maddox; he was apprentice to George Goodman, myself, and my brother: he served upwards of seven years: they were both for eight years.—One served more than seven.

Cross Examination.

Mr. Goodman found the money for the trade: Mr. Hancock was concerned in the business all the time. He lived five years out of seven at Chapple-on-le-Frith: he was a non-resident burghess.

The apprentice was rejected on that account.

I was a partner as well as Goodman, and a sharer of the profits, as well as my brother.

I was in the town all the time of his apprenticeship.

Myself and brother are neither of us burghesses. The trade was carried on in the name of Goodman and Hancock. He served all his time out.

[Withdrew.]

Admitted that Maddox is in the same case as Hancock.

As to Jones—

HENRY COWLEY *sworn.*

I know Thomas Jones; he served as an apprentice to my father.

Cross Examination.

He was bound to one Holmes, a burghess of Derby:—served him never a day.

How

How came he to serve your father?

Holmes belonged to the cloth-worker's company in London—A court was held at Nottingham—a freeman there could have only two apprentices; and if a person had a right to the indenture, he might sell it to another person.

My father bought Tho. Jones's right—Holmes sold it to my father: there was an assignment in writing; I believe it was given to some of the corporation.

[*Withdrew.*

Mr. HARRISON, Surgeon, called in again.

I saw Jones's indenture delivered to the mayor on the 5th: it was an indenture and turn-over. I don't know whether it was one instrument, or two. I don't remember whether the assignment was on the back of the indenture. I put it down in my notes, "Thomas Jones, an indenture and "turn-over from Holmes to Cowley."

These notes are my own writing; they were wrote at the same time, but with different ink.

Court. Was both the indenture and turn-over delivered to the mayor?

Yes; I am sure of it:—I read it, and am sure it was a turn-over. I made my minutes immediately after reading it.

[*Withdrew.*

HENRY COWLEY, called in again.

Jones served my father his time out: he served him seven years. My father was a burghess of Derby. Jones is about three years older than myself; he has applied to be admitted several times: I went with him in 1740; he was refused then.

then.—Mr. Grainger looked at the indentures, and when he saw my father's name, he turned his back, and said, this man will vote against us, and he shall not be sworn.

I have been with him since, and Mr. Grainger put him down in a black book. He has demanded his right several times, but was always refused.

The corporation have admitted many who had no right:—I know they ought to have admitted this man, as he has served a legal apprenticeship of seven years.

[Withdrew.]

As to Sale's—

THOMAS EATON *sworn.*

I know William Sale; he was an apprentice to Joseph Frearson, baker, a burgher of Derby. I believe he served his time. I knew both master and apprentice perfectly well. I can't certainly say he served his time: I never knew the contrary.

Cross Examination.

I believe he served his time: I never heard the contrary. I know he was apprentice there. I know he was in possession of his indenture.—I have heard many people in the town say it. I form my knowledge upon what I have heard, and what I know myself.

Did you know the master?

Perfectly well: he is dead. I remember the apprentice living with him as an apprentice; I have seen him often in his service: I am pretty sure he was there five years.

[Withdrew.]

GEORGE

GEORGE YEOMANS *sworn.*

I know William Sale; he was an apprentice to Mr. Frearson, a baker, at Derby: I remember him in his apprenticeship. I don't know whether he served his whole time: I remember him four or five years.

[Withdraw.

As to the certificates—

Mr. John Harrison, attorney, produces examined copy of registers of births of the following persons:

William Roberts,
Samuel Cock,
Samuel Roberts,
James Pratt,
Charles Houghton,
Philip Meller,
William Bancroft,
Richard Bridge,
James Brewer,
William Kirkland,
Edward Cockayne,
Robert Dudley,
William Cooke.

Mr. Harrison, attorney, produces examined copy of certificates of births of the following persons—

—I examined them with the registers.

William Maddox, November 30, 1752.
William Lacey, January 30, 1741.
Joseph Clay, October 4, 1750.

To

To prove that Joseph Clay is called Joseph Birch Clay—

JOSEPH CLAY *sworn.*

I had an apprentice, Joseph Birch Clay; he was son of William Clay: his father's name was William.—His name was Joseph Clay, in general. I never knew that he was called Joseph Birch Clay: some people have told me he was called so; I never heard his father or mother call him Joseph Birch Clay.

He came to me, October the 10th, 1759. I can't say how old he was: he might be eleven or twelve.
[*Withdrew.*]

Mr. Harrison, attorney, produces certificates of births of the following persons:

William, son of John Hopkins, March 29, 1740.

Thomas, son of George and Mary Bilson, June 6, 1746.

John Wedgeworth, (entered Wedgewood in the minute book) March 18, 1753.

SAMUEL PRATT *sworn.*

Clerk of St. Peter's parish: I was clerk before 1753.

Did you enter the baptisms in the minute-book first?

I did.

[*Minute-book produced.*]

Nobody but I and the curate have had the custody of this book: it has never been out of my custody since this dispute arose about the Derby election.

H

[*Curate's*]

[Curate's book produced.]

Looks at the minute-book.] To the best of my knowledge, nobody altered this book since I have had it.

Is (*od*) in Wedgewood your writing?

I can't tell; I would not swear it was: I remember I wrote it Wedgewood. The (*od*) seems as if it was my writing; I believe it is my writing:—it seems to me as if it had been altered.

Can you account for its being altered from Wedgeworth? was you ever applied to by any person to alter it? was it made at the time of the entry, or afterwards?

I can't tell: I won't be positive.

Was any application made to you by Mr. Coke's friends to alter it?

No. I think, now it comes to my mind, there is a copy of this written by myself, and when I gave the copy, it was written Wedgeworth: I altered it into Wedgewood. The person that came for the copy, said his name was Wedgewood, and I then altered it.

Did you do it yourself?

It was done purely by myself, and upon no account but on his telling me.—I was not desired to do it. I always have said, that that hand that takes a bribe ought to be cut off.

I can't tell who came for the copy: he was a stranger to me.

I recollect saying I never altered a word in the book; but I believe I did alter those two or three letters.

Are you not sure of it?

I believe I did.

How long is it since a person came for the copy?

I can't tell.

Was

Was it before the Derby canvass?

I can't tell; perhaps about a year and half ago. I can't tell who he was that came for the copy, I believe his cloathing was midling.

Was he a labouring man?

He seemed to be like a labouring man.

Was it Wedgewood himself?

I believe it was; I have no reason to say to the contrary: it certainly must be him. I don't remember he ever desired me to alter the register; he told me his name was Wedgewood.

Did you alter it while he was by?

I believe I did: he gave me nothing.

Did he help you to do it?

He might be by: I think somebody was with him. I can't tell who he was.

Was there more than one man with him?

No more to my knowledge: he was by as well as Wedgewood, when I altered it.

The certificate was my writing; I gave it to Wedgewood himself: I never gave it to any but Wedgewood, in the presence of the stranger.

Wedgewood, I believe, then told me that he claimed to be a voter of Derby: he said so in the presence of the other man. He told me he wanted his certificate to be a voter of Derby; and he said, instead of Wedgeworth, his name was Wedgewood. He might say something to this effect, that he wanted it altered for the purpose of being a voter; the other man might be present then.

Had they been at the parson's register to examine it?

I don't know any thing of it.

Did the parson's book and your's agree before you altered it? Had they been at the parson's?

I can't tell; they did not say any thing about it.

Did you know Wedgewood's father and mother?

No; I don't believe I did.

[*Withdrew.*]

THOMAS KEYS *sworn.*

I know John Wedgewood; his father's name was William Wedgewood—I knew him; his mother's name was Ann Wedgewood: they lived in St. Peter's parish, Derby.

John Wedgewood was apprentice to John Wild, a silk-throwster: he may be twenty-two years of age, or more.

Who summoned you here?

Mr. Wilkins brought me up.

Was you called before the common-hall to prove this, the 1st of February?

No.

[*Withdrew.*]

Mr. HARRISON, Attorney, again called.

The parish register was produced at the common-hall.

Was any satisfaction then given that the man's real name was Wedgewood?

No; I did not know it then.

When I went for the copy, I took notice that it was Wedgewood in the clerk's book; I saw the erasure: I asked no questions about it. I said here is a difference in the two books: I don't think I asked any questions: I never knew the difference before then,

Did

Did you ever converse with any person about that book ?

No, I did not.

I don't think the clerk's book was produced at the common-hall.

[Withdrew.]

Indentures of the following persons produced.

Richard Coke	—	—	—	—	1739
Charles Clarke	—	—	—	—	1744
William Elcock	—	—	—	—	1753
Thomas Jones (indenture lost)					
Richard Lovegrove	—	—	—	—	1727
John Sterndale	—	—	—	—	1749
William Sale	—	—	—	—	1727

Thomas Hancock's to be proved to-morrow.

Adjourned 'till to-morrow.

F I F T H D A Y.

Martis 6° Die Februarii, 1776.

Committee on *Derby* Election proceed.

AS to Thomas Hancock's—

THOMAS HANCOCK *sworn.*

Thomas Hancock was my apprentice; he may be about twenty-three years old now: when he first came to me he was about eleven.

[*Withdrew.*

To prove residence of masters and apprentices, Mr.
JOHN HARRISON, *Surgeon, sworn.*

I knew George Saxelbye: I knew him upwards of twenty years: he has been a resident at *Derby* during that time. He is dead. I know his apprentice, Thomas Bilson; I knew him on the 5th and 9th of January, 1775; he was then resident. I knew Saxelbye was a resident of *Derby* above twenty years; he was resident in 1761. He died five, six, or seven years ago: I attended him in his illness.

Cross Examination.

I don't think Saxelbye has been dead nine years, I can't fix it exactly. I don't know whether Bilson's apprenticeship was expired when Saxelbye died.

[*Cor-*

[*Corporation indenture-book produced.*]

Entry of Saxelbye's being sworn a burgesſ, in 1753, read.

(*Stamp-rolls produced, to ſhew that Saxelbye's name is upon them.*)

As to Charles Clarke—

Same Witneſs.

I knew James Lane Baker; he was reſident at Derby. I knew him twenty years. Baker is dead; has been dead twenty years. It is above forty years ſince I firſt knew him a reſident; he was reſident at his death.

I knew Charles Clarke; he was reſident in Derby, fifth and ninth of January, 1775: he has been reſident above three years.

(*Rolls read, to ſhew Baker was admitted burgeſs in 1737.*)

Croſs Examination.

I am fifty-three years of age; I was about thirteen when I firſt knew Baker: I remember him being an apprentice—he was reſident at Derby. I never was a week without ſeeing him for ten or fifteen years.

I can ſpeak with certainty as to it.

[*Withdrew.*]

As to Richard Coke—

THOMAS EATON *ſworn.*

I knew Francis Meynell; I have known him all my life: he has been dead ſeveral years. I was
born

born in 1715. He always resided in Derby: he was an apothecary. Meynell was sworn in 1725.

I knew Richard Coke his apprentice; he has been an apothecary in Derby ever since his apprenticeship expired.

[Withdrew.]

As to Joseph Clay—

BENJAMIN CHETHAM *sworn.*

I know old Joseph Clay, and young Joseph Clay; old Joseph is alive: I have known him fourteen or fifteen years. He is a resident in Derby: I knew him in 1759. I knew all his family: his father's name I can't recollect. Old Joseph Clay has been a resident in Derby ever since I was a boy.

I have known the eldest Clay, fourteen or fifteen years; I knew him in 1759: he was a resident in Derby in 1759.

I have known the youngest Clay some time; he was resident the 5th of January, 1775, and has never been out of Derby since that time.

[Master admitted in 1754.]

Cross Examination.

I knew old Clay to be resident myself; I might live half a quarter of a mile from him: I had an acquaintance with him. I am very clear he was always resident in Derby: I have seen him there once in three weeks or a month.

[Withdrew.]

JOSEPH CLAY, *senior, sworn.*

I have lived in Derby ever since I was born.

Young

Young Clay was my apprentice; he served me in my own business, and in my own house, and his father's shop, seven years: his father was a framework-knitter, as well as myself; he might work with his father within a trifle of half of his time. When he was bound, his father and I agreed, that one of us should find him cloaths and provisions. His father has been dead some part of the time; and then I took him wholly: his father died at the place of abode where he lived. I never had any apprentice but him. I had no journeyman. His father had an apprentice besides him. It was at my option to let him work with his father or not.

During the time this boy was with his father, had you any employ for him?

I always had employment for him; his father satisfied me in every respect as I required.

His father has been kind to me, and I to him, but he never paid me any money for his son: the boy was bound to me for seven years.

When the boy worked with his father, had you any employment for him yourself?

I had not. I am a framework-knitter, and one of the *waites* of Derby.

The boy worked with his father, by my consent, three years—an agreement between us. I kept an alchouse at the time he was apprentice to me.

[*Withdrew.*

As to William Elcock—

WILLIAM CASH *sworn.*

I knew John Manning; he has been dead several years; I knew him a great many years; I
I worked

worked with him fourteen or fifteen years; I knew him thirty years ago: he always resided in Derby.

I knew William Elcock his apprentice; I knew him last year: he lived in Derby all his apprenticeship, but after he was out of his time he went for a soldier: he returned soon afterwards, and has resided in Derby ever since.

Cross Examination.

I cannot tell how old William Elcock may be; it is about fourteen or fifteen years since he was loose from his master: he told me he had applied to be admitted two or three years since, and they would not grant his request.

[Withdrew.]

Mr. WILLIAM MERRILL LOCKETT sworn.

The stamp rolls of burgessees of Derby all prior to 1721, are missing: I have never seen them.

[Common-ball book produced, to shew that John Manning was admitted a burgesse, 18th March, 1711.]

Committee adjourned for five minutes.—Resumed.

As to William Hopkins—

WILLIAM HARRISON sworn.

William Hopkins was my apprentice; I lived in Derby when he was bound, and all the time of his apprenticeship.

Hopkins has lived in Derby ever since.

(William Harrison was admitted in 1725.)

Cross

Cross Examination.

I am 75 years old.

How came your apprentice not to apply before to be admitted?

He was very poor, I believe that was the reason: he has applied several times to be admitted.

[Withdrew.]

As to Thomas Hancock—

THOMAS HANCOCK, *called in again.*

Thomas Hancock was resident in Derby, 5th of January, 1775.

William Maddox was resident in Derby, 5th of January, 1775. and worked with me. Mr. Goodman resided in Derby when these apprentices were bound.

[Withdrew.]

(George Goodman was admitted in 1755.)

As to Thomas Jones—

HENRY COWLEY *sworn.*

I knew Anthony Cowley, I believe he was my father; he was a resident in Derby all the time Thomas Jones served him: he never lived out of Derby. I knew Thomas Jones; he died since the election: he lived in Derby last year down to the time of his death.

(Anthony Cowley admitted 6th August, 1711.)

I lived with my father the whole of Jones's apprenticeship.

[Withdrew.]

As to William Lacey—

BENJAMIN CHETHAM, *called in again.*

I knew Samuel Grice; he has been dead seven or eight years I believe. I knew him eighteen or twenty years before he died: he lived in Derby all that time.

I know William Lacey, his apprentice; he lived in Derby last year.

Cross Examination.

I have worked for Grice; he was a fadler, I am a whitesmith. I lived near him; I saw him frequently. I voted against him once when he put up for parish-clerk.

(Grice admitted 2d May, 1722.)

[*Withdrew.*

As to Richard Lovegrove—

Same Witness called in again.

I know Lovegrove; he lived in Derby in January, 1775; he has lived there ever since 1760.

[*Withdrew.*

Mr. EATON, *called in again.*

I knew Robert Creswell; he has been dead above thirty years; I knew him ever since I was a boy, till his death. He fitted me with shoes: he always lived in Derby since I knew him.

[*Withdrew.*

Mr.

Mr. LOCKETT, called in again.

I never saw stamp rolls, or common-hall books, of 1690.

(Burgefs book produced, to ſhew Robert Creſwell's admission, 1690.)

(Hall book produced.)

The hall book goes back to November 29th, 1749.

We always refer to the burgefs book, if any question ariſes about a man's being admitted a burgefs.

[Withdraw.]

Entry read, viz. "Creſwell Robert, jun. burg.
"26 Martii, 1690."

As to John Sterndale—

Mr. EATON.

I know Joſhua Simmonds; have known him this twenty years: has conſtantly been reſident in Derby.

I have been acquainted with him upwards of twenty years; he has never lived any where but in Derby.

I know John Sterndale; he was reſident in January, 1775: he lives near me.

Croſs Examination.

I have known Simmonds upwards of twenty years.

I had no acquaintance with Sterndale; he lived within a hundred yards of me.

Sim

Simmonds has been resident ever since he set up for himself.

[*Simmonds admitted 28th July, 1740.*]

As to William Sale—

Same Witness.

I know Joseph Frearson has been dead thirty years or upwards; I knew him to the time of his death, from the time of my going to school: he was resident of Derby.

I knew his apprentice, William Sale; he was resident in Derby.

Frearson was in business when I first knew him: a baker by trade.—I knew nothing of the hall-book.

(Withdrew.

[*Frearson admitted in 1722.*]

As to John Wedgewood—

GEORGE RICHARDSON *sworn.*

I knew John Wilde; I have known him twenty years or upwards: he was a resident in Derby; I lived next door to him.

I knew Wilde long before, and long after 1767. I went to his funeral. I dealt with him after 1767: I knew that he had an apprentice one Wedgewood.

(Withdrew.

[*John Wilde admitted in 1738.*]

CHARLES LOWE, *sworn.*

I knew John Wedgewood; I knew him in January, 1775: he was a resident of Derby.

To prove residence in 1775, of those claiming by birth.

As to Philip Meller—

Same Witness.

I knew Philip Meller in January, 1775; he was resident at that time in Derby.

[Ellis Meller admitted 29th of August, 1719.]

As to William Kirkland—

I knew William Kirkland in January, 1775; he was resident in Derby at that time.

[James Kirkland admitted in January, 1750.]

As to Edward Cockayne—

I knew Edward Cockayne in January, 1775; he was a resident in Derby at that time.

[Nathaniel Cockayne admitted April, 1744.]

As to Robert Dudley—

I knew Robert Dudley in January, 1775; he was a resident in Derby at that time.

(William Dudley admitted 17th April 1736-7.)

[Withdrew.]

Mr. JOHN HARRISON, Surgeon, called.

As to William Roberts—

I know William Roberts; he was resident in Derby in January, 1775.

(Samuel Roberts admitted 6th June, 1741.)

As

As to Samuel Roberts—

I know Samuel Roberts; in January, 1775, he was resident in Derby.

As to Samuel Cock—

I know Samuel Cock; in January, 1775, he was a resident in Derby.

(Henry Cock admitted 13th February, 1734.)

As to James Pratt—

I know James Pratt; in January, 1775, he was resident in Derby.

He is waiter at the King's-Head, and was so a year or more before the election.

(Withdrew.

(Richard Pratt, tile-maker, entered in common-ball book as admitted 21st April, 1723.)

Mr. LOCKETT, called in again.

The rollof 1723 is lost, and I believe I never saw it.

Mr. HARRISON, Surgeon, called in again.

As to Charles Houghton—

I know Charles Houghton; in January, 1775, he was resident in Derby.

(George Houghton admitted 2d August, 1733.)

As to William Bancroft—

I knew William Bancroft in January, 1775; he was a resident in Derby at that time.

(William Bancroft admitted 23d September, 1738.)

As

As to Richard Bridge—

I know Richard Bridge; in January, 1775, he was a resident of Derby.

(*John Bridge admitted 23d June, 1742.*)

As to James Brewer—

I knew James Brewer in January 1775; he was a resident of Derby at that time.

[*James Brewer admitted 14th September, 1751.*]

[*Withdrew.*]

JOHN COOK sworn.

As to William Cook—

I know William Cook; I knew him in January 1775, he was resident in Derby then.

I am cousin to William Cook; he came to Derby in December 1774: he went from Derby in March 1775—it might be the latter end of February.

He lived at Derby with John Burton, a grocer, whose wife is Cook's sister.

Cook was a felt-maker; he worked with my father, who is a hatter:—my father kept no other journeyman but him there. I work for myself.

When William Cook went from my father, he was vacant for a man a long time after; perhaps a fortnight or so.

How came William Cook to Derby in 1774, was it for the purpose of the election?

No; he came to get work: he was over the Easter before that, on a party of pleasure. Between Easter and December, 1774, he lived at Uttoxeter. After he left Derby he worked with a person in

K

Lon-

London : he never worked at Derby since his apprenticeship, except from December 1774, to February 1775.

(*William Cook admitted 6th of June, 1741.*)

[*Withdrew.*]

As to admissions from the 26th of October 1772, to the 9th of January 1775, before the mayor and three aldermen—

Mr. LOCKETT, called in again.

When burgesses were admitted before the mayor and three aldermen, it was entered as an act of the mayor and three aldermen: there always is a special entry when there was only the mayor and three aldermen.

[*Withdrew.*]

Following entries of admissions, from common-book, read.

26th October, 1772, one burges admitted before the mayor and three aldermen.

3d November, 1772, ditto.

13th November, ditto.

4th January, 1773, two by right, and three honorary.

11th January, 1773, one honorary.

18th January, 1773, three honorary.

1st February, 1773, six honorary, by order of common-hall.

8th February, 1773, one honorary.

15th February 1773, one honorary.

1st March, 1773, one.

19th April, 1773, two honorary.

3d May, 1773, five honorary, and one by right.

10th

10th May, 1773, one by right.

28th June 1773, one by right, and one honorary.

22d September, 1773, three by right.

1st November 1773, nine by right.

31st January, 1774, two by right.

14th February, 1774, four by right.

28th February, 1774, two by right.

(Seventy-four admitted between 26th October, 1772, to Mr. Heath's mayoralty, and after that to the election, thirty-four.)

24th October, 1774, and 1st February, 1775, following entries [read]:

" William Boam, silk-work-knitter, son of William Boam, brick-layer.

" Edward Cotton, silk-frame-knitter, son of William Cotton, wheelwright, sworn burgeses the 24th day of October, 1774, before Christopher Heath, Esq; mayor, Mr. Alderman Edwards, Mr. Alderman Stamford, Mr. Alderman Bingham, and Mr. Alderman Flint.

" 1st February, 1775, before Christopher Heath, Esq; mayor, and the rest of the aldermen.

1st February, 1775, ORDERED, " At this common-hall, that Mr. Mayor be indemnified from all expences, that shall, or may accrue, for or by reason of his refusing to admit any person or persons to be burgeses of this borough; and from all costs and charges that shall or may fall upon him relative to the execution of his office in the late election."

Admitted that the twenty-six persons tendered themselves at the poll.

Mr. Balguy sums up.

Adjourned 'till to-morrow at eleven o'clock.

S I X T H D A Y .

*Mercurii 7^o Die Februarii, 1776.*Committee proceed on the *Derby* Election.*Mr. MANSFIELD opens the Case of the Sitting Member.*

S I R,

UPON the part of the sitting member, I am now to trouble you, upon that part of the case, which we are now considering; which is, whether the twenty-six or twenty-seven voters have, or have not, a right to be added to the petitioner's poll: with regard to which, it is admitted, upon their part, that if none of these are to be admitted, or if a greater number than fourteen, or a less number at least than fourteen, are not to be admitted, that it will leave the majority with us: if the whole are to be received, we admit that it will give to them a majority; if a less number than the whole should be received, but more than fourteen, it will not give them a majority; but it would leave that question to be decided by the votes, which we shall be able to strike off; and, as we flatter ourselves, unless they should be able to establish almost the whole, we shall strike off a sufficient number of votes to give Mr. Gisborne a majority.

But, at present, the first and great question to be decided by you, is, whether the whole of these twenty-seven are to be added to the petitioner's poll. And upon the part of the sitting member, Sir, I am to contend before you, as it seems to me, upon solid grounds (grounds I am sure we have not

not yet heard shaken) that none of these twenty-seven can, in the situation of things, be added to the petitioner's poll. You must have observed, Sir—it cannot have escaped the attention of the committee, that the question in this cause now, and indeed for a considerable time, before you, has been totally different from that, upon which the petitioner applied to parliament; and upon which he instructed his counsel to state his case. He came before you, telling you, that the petitioner had a clear majority of legal votes; I mean, as far as these twenty-seven go: that a certain number of persons, being entitled to their freedom, ought to have been admitted by the mayor and aldermen, or three of them; that that was the constitution of the borough; that that was the legal mode of admission in Derby; that such being the legal mode of admission established by the charter, that these several persons had applied to the mayor and a proper number of aldermen to be admitted, and they had been refused. This, Sir, was the ground, upon which the petitioner came to parliament, and upon which his case was rested: and thus far the petitioner was right in his claim, if the facts had warranted it; and thus far his counsel certainly spoke the language of a lawyer; because it would have been too much for us, upon the part of the sitting member, to have contended, that, if that had been the constitution of Derby, that a mayor and three aldermen were to have admitted freemen; that these freemen had been clearly entitled to their admission—that they had applied to the mayor and three aldermen, and had been without reason rejected, it would have been too much for us to have contended, that you should not attend to their rights: but that ground, Sir, at once failed my friends; they were obliged, not indeed with-

without struggling, as they had reason to struggle for it; but they were driven from their ground, they were forced to give it up, and then a new language is assumed, and colours perfectly different are drawn upon the petitioner's case: for, from that first decision of yours, it is no longer said in terms, that these men ever applied to be admitted, to those persons, who, by the constitution of Derby, had alone the power to admit them. Language is used to make you forget, sometimes, the true point, and to insinuate, as if some such thing was done; but it has never yet, by either of my friends, been asserted, that that was done: but, as the law will not help Mr. Coke, something is to be substituted in its place: though the freemen have not applied to those, who have the constitutional power of admitting them, yet they have done something, which is to be taken as an equivalent for it. I need not again call to your mind the phrases that were used; but we heard of equity, and of substantial justice, and many phrases of the like sort; but the ground of law is deserted. Then, Sir, you are told farther, why it would be extremely hard upon those persons entitled to their freedom, if they, who were in a state of ignorance, and have done, as my friends say, all that could be expected from them, if they are to forfeit their rights: for that has been a favorite word with my friends, and we have heard it more than once, that it would be particularly hard, and injurious to them; because, say they, these men, who claim, have not only done all that was expected from them, but in truth they have been defrauded, they say, of their rights, by the acts of the mayor: he has been guilty of a fraud upon them; and it is owing to that fraud, that—What?—Here is a little artifice made use of, in order to draw your attention off from that, which

which is the true question between us; as if the mayor, in truth, had been guilty of fraud, in preventing these men: for that is the question — in preventing these men from making a proper application for their freedom; for which fraud, you will presently see, there is not the least reason nor pretence. Now, Sir, to lay out of the case so much of this language, as, it seems to me, has nothing to do with it: — With regard to the persons, that are now claiming before you, there is no question at all about their forfeiting any right; there is no question of such sort before you; they have forfeited no right, they will forfeit no right: for, if they were legally and constitutionally admitted at the common-hall after the election, they will, as long as they live, continue to be good burgeses of Derby, and will enjoy every right belonging to that character. If they have not yet been legally admitted (for in truth there stands the bye-law* in their way); if they have not been properly admitted, still they incur no forfeitures; for at any hour they may call upon those, who have the authority to admit them, and be received into that borough; and, if those, who have the authority to admit them, will refuse, the Court of King's-Bench will grant a mandamus, and compel those, who have the power to receive them, to admit them; so there is no question about the suffering of these men: — What then is the question? It is this: Whether they were so completely in the possession of their rights, at the time of the election, as to give them the same right of voting, as those that were completely invested with the franchises of burgeses of Derby? and that is the sole and single question between

* The bye-law of the 10th of Dec. 1743, which says, That burgeses shall leave their certificates and indentures at one common-hall, and be admitted at a second.

tween us—Sir, to lay out of the question too a great deal, that has been said, and talked of, and put in different shapes, about the fraud of the mayor—I watched my friend, who last addressed you, than whom, I am sure, no man is more correct in his attention to his case, or to the arguments that it justly affords; and I waited all through his speech to observe, whether, in any one part of it, he pretended, that the mayor, or those who acted with him, had, at the time when these men wanted to be admitted, the least idea of a common-hall being necessary; or if they had done that, which would have been extremely culpable in them: if, thinking a common-hall was necessary, they had misled and deluded these men, and made them apply in an improper manner, when they might have applied in a proper one. Now my friend argued justly upon the facts of the case, and there was not any such insinuation throughout all he troubled you with; and, I am very sure, if the case had warranted any such inference, he would not have been wanting to point it out to you: but, in truth, Sir, the whole facts of the case warrant the contrary. Mr. Wilmot, and the two Mr. Harrisons, are the important witnesses upon the part of the petitioner. The application of these men is proved upon the 5th of January—What is done then? the first application is made to the mayor—What is his language? why, that he would get a sufficient number of aldermen to meet in the afternoon:—when a sufficient number of aldermen are come, he actually begins to swear Mr. Coke—Why does he not go on to swear him? why, they are told, by alderman Bingham or Flint, no matter which, one of the aldermen, that a great number of burgessees are ready to be admitted; and if Mr. Coke is admitted, they will have the same right, and

and will require it. Then the mayor says, Sir, you must excuse me: excuse him from doing what? not from admitting Mr. Coke in a wrong way, but in a right way; in which way, if he admitted Mr. Coke, he would be under the necessity of admitting all the rest: and, as they suppose the mayor to be a friend of Mr. Gisborne, and willing to serve his interests, to be sure, that reluctance of the mayor proceeded from an idea, that, if he admitted the burgesses, it would be a good admission. The next affair is in the afternoon, when many applied, and carried the certificates of their birth; then nothing is done, but these proofs, these documents, are left: it is agreed, that they should come again upon the 9th, when the mayor and aldermen are to meet; in terms they say so:—they meet upon the 9th; what is done? they admit six. Several of those, who had offered upon the 5th, request to be admitted; they take it ill of the mayor, that he would not admit them, and the mayor is supposed (if there be any foundation for the insinuations throughout the cause upon the part of the petitioner) the mayor is supposed, out of an inclination to serve Mr. Gisborne, not to admit these men upon the 9th: why, it was not an inclination not to admit them in a wrong way, but it was a desire to prevent their voting, if their insinuations against the mayor were just; it was a desire to prevent their being admitted, because, if they had been admitted, every body then supposed, they would be legally admitted. What is farther done with regard to the 9th? why, there is a solemn promise, not only by the mayor, but Crompton, one of the aldermen, that, *upon their honors*, they would meet, and would admit them upon the 16th: to this Mr. Harrison, the surgeon, added but a word, which I mention, just to lay out of

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the case, because Mr. Harrison did very candidly, by his account of it, lay it out of the case: indeed, I had a suspicion, that the word was begotten in London, and had never been mentioned at Derby; but in truth the mayor told them, that if they would come upon the 16th, they should be all *properly* admitted; as if the word *properly* implied, that the mayor had in his mind more admissions than one; and as if he meant to say to these men, "I will take care you shall be admitted in the manner the constitution requires." Now no such thing was meant, and Mr. Harrison himself candidly explains to you, that they had neither of them the least idea of any other mode of admission being necessary, than before the mayor and three aldermen; and indeed the very language speaks it: it is not the language only of the mayor; Mr. Crompton joins in it; we give you our honors, we will attend then; which shews clearly, that all that was in the contemplation of these parties was, that the mayor and three aldermen were to admit, and none else: this was the ground upon which I always meant to put the case, as it appeared to me to be a true one in point of fact. They read to you a great number of entries from books, containing the admission of burgessees from 1772 downwards, something about two years, during which time it had been the practice to admit in this way. That such an opinion as to the rights had in general prevailed at Derby, and in the minds of all the members of the corporation, I have no doubt; one must have been blind to every passage and step throughout this cause, not to have seen, that that must necessarily have been the case: then, I think, I may fairly say, that as to any thing like fraud, I mean fraud as applicable to the present question, there is no pretence to impute

pute it to the mayor, because the mayor himself never meant to cheat these men into a belief, that this was the right way of admitting, when it was the wrong one; at a time, when it was clear to demonstration, that he himself had no idea, but it was the right one: the mayor then seems to me to be perfectly acquitted, as to any such fraud. I give my friend leave to comment upon it, as much as he will, in his speech, and I dare say it will make a very handsome part of it, the mayor's conduct to prevent these burgesses to be admitted, in the way they thought it necessary to be admitted: — I lay that out of the case, because it seems to me to be nothing to the present question. My friend, Mr. Balguy, said, talking upon this subject, that the mayor ought not to mislead the burgesses; that here these poor men, who are so unfortunately prevented from voting at the election, have been extremely industrious to assert their rights: whether they were industrious or not, is not the question; but was that industry properly directed? did they go to a common-hall? did they ask for a common-hall? did they dream of a common-hall? the only way, place, and manner, in which burgesses can properly be received into this corporation: and that the mayor ought not to mislead them, I don't dispute; it is wrong in any man to mislead another, it would be more so in the case of the head of a corporation: but he did not mislead them, they proceeded in that road, which he erroneously took, as well as they, to be the right road. Having removed these considerations, as seeming to me to be nothing to the purpose, and it being exceeding clear, that the mayor had the same notions of admission as they had, and never did intend to mislead them by any artifice, the question will then come to be this, Whether ignorance of the constitution of the borough,

preventing men from applying in a regular way for their admission, shall be the foundation of their right to vote at an election? It will come to that question, and I shall have never yet heard, or known, and I believe I never shall know, an instance, in which such an ignorance, and a blunder, and a pursuing a wrong method in consequence of such an ignorance, should help a man to attain a right: and that is solely and simply the question now before you. Every man is supposed to know the law as a subject; every man, who has any connection with a corporation, and any title to any of its franchises, is presumed to know the way to attain them; and if he proceeds in a wrong way, and does not pursue the right one, so far he has made a blunder, not one for which he deserves to be punished, but he has not pursued the legal mode; and he must pursue the legal mode, before he can have the benefit of the law, and can complete his right. Now what is the substance of what these burgesses say, and what they must say? Why, every burgess of Derby, that is, every burgess admitted, (because, 'till a burgess is admitted, he is no complete burgess) and is in possession of his franchise, has a right to vote for members of parliament — Well, I was not in possession, but still I have a right to vote; why? because I applied to get possession in a wrong way: why? because I did not know the right one: then whose fault is that?—You are just in the same situation, as every other man is, having a right at law, who does not properly enforce it; and then he remains just in the same situation, as if he had not attempted to enforce it at all: the law gives a right here to freemen, legally invested in their franchise; if a man, not so legally invested, would claim any such right, what is

is he to do at least? why, he is to shew, that in a regular way he has applied to be invested in a proper manner; and that, having done all the law could require of him, by the injurious act of another, he has been hindered. Now my friends don't say, that these men have done that; because they had not only never applied to a common-hall, but the contrary is proved, that they never applied to have a common-hall called: now let me suppose farther, to have this matter understood; let me suppose, that these men never had, to this hour, been admitted; that they had not been admitted after the election; what must they have done in order to have gained admission? why, they must have gone to the court of King's-Bench for a mandamus for that purpose: I speak in the hearing of some gentlemen of the committee, who know that mode extremely well. Now what mandamus would these men have pursued, or could, 'till we gave them a little light at the beginning of the debate before you? why, Sir, they must have applied, (and would have done, if they had not been admitted) for a mandamus to the mayor and three aldermen of Derby to admit them; and they would have stated in their mandamus, that, by the constitution of this borough, the power of admitting freemen was in the mayor and three aldermen: then the mandatory part of the writ would have said, that such persons represented themselves to the King as having a right, and the writ would have said, "In the King's name we command you "to admit these people." If such a writ had been issued, what would have been the consequence? If that business had been transacted, they would have looked into their charters and usages, and they would have answered, in a return to the mandamus, that, by the constitution of the borough,

rough, the mayor and three aldermen have not the power of admitting freemen, and therefore they cannot obey this writ: upon that answer coming back, what would have been the consequence? why this—my friends would have seen their error, as they have now done; they would have quashed that writ, and have applied for another, in which they would have properly stated the constitution, That the mode of admission at Derby was by the mayor and other parties at a common-hall; and they would have obtained a mandamus, directed to the mayor and others assembled in common-hall; to those, in whom the power of admitting freemen is invested by law. Now what are you required to do? To give them that right, as if they were actually in possession of it, which right they endeavoured to get at Derby, in a way which they must have failed in, if they had applied to a court of law:—but you are desired to do much more; for you are desired to consider them as actually in possession, though they have made the same erroneous application. Sir, let me also remind my friends of the law, which I before suggested to them, and I am sure in that, which I state to be the law, my own opinion goes with me: let me suppose these men had been admitted, they might have every one man of them been turned out by a prosecution against them as burgesses; a *quo warranto* is the proper one for the purpose; if such a prosecution in *quo warranto*, the meaning of which is, an information in the name of the king against one of these burgesses, to shew by what authority he claims to act as a burgess of Derby; in answer to which, he is obliged to say in the Crown-Office, what is the ground of his title to his office: and unless he can shew a legal title, he will be turned out. Now a part of that legal title is admission; if every one of these men had been admitted in this manner,

manner, and an information had been granted, calling upon them to shew their title, they must have pleaded, that every one, by the constitution of the borough, who serves an apprenticeship, is entitled to his freedom; by the constitution of the borough also, that the mayor and three aldermen have a power to admit freemen: I served an apprenticeship, I applied to the mayor and three aldermen, they did admit me: that would have been his plea: what would have been said in answer? why, that the mayor and three aldermen had not the power to admit freemen, and that must have been decided by the constitution against them: so that upon a prosecution against every one of these men, they might actually have been turned out, if they had been admitted in the way, in which alone they applied to be admitted. The burgeses of these corporations have, belonging to that character, very often interests of some value; the most common one is, they have a right of feeding their cattle, a great number of them, upon the land adjoining to their towns: let me suppose one of these burgeses now to have been so admitted by the mayor and aldermen, as they claim to be, and to have exercised a right of feeding their cattle upon the common, and the owner of the soil had brought an action against him, and said, Sir, you have no right to feed your cattle here; he would have said he had, for he was a burges of the corporation of Derby; why, that fact being denied, and it being proved he was admitted by the mayor and court of aldermen, who had no right to admit him, the determination must have been, that he was not a burges of Derby: this must have been the decision, Sir, if these men had actually been admitted; and yet, not being admitted, you are required to do more; you are to consider them as admitted,

mitted, and you are to give them that, which, if they had been admitted, they could not have had, because they must have been turned out of their franchise, and could not have voted—Well, but in fact here were, between 1772, and the election, a great many burgesses admitted in this manner, who voted at the last election, and who are not objected to:—it is true, Sir; but that does not affect the present question, and you will see why; the truth is, that, if all those, that were so admitted, were to be struck off the poll, it would have but very little effect upon them; for they were very nearly equal on both sides: they were so equal, that it was not for the interest of either party to object to them, and to do that, which he must have done, if he had objected to them, as the matter has hung so long, to have proceeded in a court of law to turn them out of the borough: but, Sir, in addition to those, who were so admitted, a great number more have been admitted, who were friends to either party; why, then it would have been incumbent upon the party, against whom such persons so additionally admitted offered their votes, it would have been incumbent upon him to object to them. If those twenty-seven or more, who offered their votes for Mr. Coke, had been in fact admitted, then Mr. Gisborne would have been called upon, in point of interest, to have objected to them, and he would, by objecting to them, as the other number stood equal, have had the advantage of preventing every one of these men from polling; so if upon the 5th, the 9th, or 16th of January, every one of these men had been admitted by the mayor and aldermen, Mr. Gisborne would have had a right to object against them, as improperly admitted; he would have had a reason for objecting against them, because they would

would have turned the numbers much against him: as to the numbers, I mean those, who were admitted in an illegal way—What are you doing, if you determine these votes to be legally admitted? why, you cut off Mr. Gisborne from a legal objection to these votes, which he would have had, if they had been admitted at the time; he would have objected to them at the poll, or he would have wanted common sense: if he had not, what would he have done after the poll?—have prosecuted these men by information in the court of King's Bench; he would have turned every one of them out; and I put the case here—and if my friends will shew you, that this would not be the case, I give it up—but it would be the case: then I beg leave to say, that, deciding these men to be admitted as upon the 5th, the 9th, or the 16th of January, is depriving Mr. Gisborne of a clear legal objection to those votes, which he would have had, if they had been admitted; and I take that to be neither formal, legal, nor substantial justice. Sir, cases may be put to you, very similar to the present, where there are other rights of voting, in which, if persons blunder, who have the clearest title in the world, yet they never can be admitted to give their votes; one I just suggested upon a former occasion: in counties persons vote by freehold, so they do in many boroughs: let a man have the clearest title imaginable to an estate, let him endeavour to enforce it by ejectment, and let him make a mistake in the name of the parish, and call it Hampstead instead of Highgate, and go down to a trial, and miscarry, what is the consequence? he cannot vote: another man is in possession of the estate, he cannot legally enforce his right: all the substantial justice in the world is with him; it is very un-

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conscientious for a man to keep an estate from the man who has the legal title; but what does the law say? Sir, if you have a legal title to this, you must complete that by getting possession; you have not legally enforced your title to the estate, and therefore you are not to be considered as legally possessed of it, or to have those advantages of it, which you would have, if legally possessed of it. Suppose the parson of a parish votes, having a living; why, he has been presented, instituted—he has made a blunder, and not got rightly inducted: can he vote? No—but he has all the right clearly in him. Aye—but, Sir, you have not legally supported your title, you are not a legal voter: and it is the law of this country, that is to decide, what shall be legal votes, and how titles to livings, estates, or any other thing, shall be enforced. To put this in another view: Sir, if, for the present purpose, this mayor has done so wrong, as to give these men a right of voting, by not admitting them, they might bring an action against him, that is clear; no lawyer will deny it: if the head of a corporation, and three aldermen, or any other persons in a corporation, have a right and power to admit a freeman, and a freeman, who has a legal title to be admitted, applies to them, and is refused; there can be no doubt, that he may bring an action against them for the injury. Now, can these men bring an action here? will my friends say they can? I don't believe they will: I am sure they cannot; for to bring an action, what must be stated? why, this must be stated: I have a title to my freedom; being entitled, I am to be admitted by such and such persons, who by the constitution are to admit me; I apply to you, who have that power, and you refuse me: Now could any one of these, in this case, state, that he

he applied to the mayor and a common-hall? no—If he was to state, as a complaint against the mayor, that he applied to the mayor to call a common-hall, every one of them must fail in that also; because never an one of them made such application: they applied to the mayor and three aldermen, who had no legal power to admit them, and therefore no action could be maintained against the mayor and three aldermen, because they neglected to do that, which would have been an ineffectual act, and which they were not bound to do, because they had no authority to do it. I remember, in a debate we had sometime before, my friend, who sits next me, said, perhaps there might be no ground for an action, but there might be for a charge of a conspiracy; a conspiracy to do what? it must be to deprive them of their legal admission; for a conspiracy to deprive them of being admitted before the mayor and three aldermen, which admission was nothing, is a conspiracy which amounts to nothing at all: if any complaint of that sort was to be made against the mayor and three aldermen, it must fall to the ground for the same reason, as the action must fail, because the foundation of all, either of a civil suit, or a prosecution against them, must be the legal right of these men to be admitted in the manner they applied to be admitted, as they never did apply in a legal constitutional manner. I put the case in these views, because I wish the subject to be perfectly understood, and because I am satisfied, the more it is examined, and canvassed, the clearer it will appear, that these men, never having applied to be admitted in the constitutional manner of the borough, they have never done that, upon which they could found any civil remedy for a supposed violation of their right: there can be no prosecution

tion against those, that refused such an admission as they demanded, because it was not the legal admission into this borough. I watched through all that fell from my learned friends, both him who last addressed you, after the evidence was gone through, as well as what fell from my learned friend near me, whether they could suggest to you an instance, in which the law of this country has said, that a man shall be held to be in possession of an estate, or franchise, which he has not only not got the actual possession of, but which he has never properly pursued his legal remedy to obtain possession of. Now they have not one of them ever suggested to you any such instance, not one of them: and I am sure, if this cause was to last before you much longer than it has hitherto done, you would perceive the same silence in them, for no such instance can possibly be put. The law of this country prescribes forms and modes, by which men, who have any civil rights, are to enforce them: if persons, having such rights, do not enforce them in a regular way, why, the law says, they don't endeavour to enforce them at all; because the law never can consider any attempt to enforce a right, to recover an estate, to get possession of an office, or any thing else, that may be imagined; it never considers any endeavor, as any effect to that purpose, but such an one, as the law has prescribed: the instance I put of a living, is very clear; and so it might be of an hundred of the same sort, that might be enumerated to you; and, I am clear, none can be found, in which the law gives any effect to a right at all, which the person, who has it, does not endeavor to support, and enforce in a legal formal way. My friends, aware of the force of the objection that we make, one of them, indeed, more lightly told

told you, that men were not to be exact; that you would not expect that such men should be strictly right: why, Sir, if there can be a case, in which the utmost strictness is required, it must be such an one as the present; because you are desired to consider these men, as actually in the full possession; you are desired to go before the law, and consider them as actually in possession of, what the law has not put them in possession of; and to do that, which, by a legal process, they must have been a long time in doing: why surely, Sir, that is not to be done, unless the persons, who wish for this singular advantage, can shew, that they have been strictly and regularly right in every step that they have taken: and that these men have been so right, I am sure, my friend, who is next to address you, when the whole of this case is gone through, will not pretend. Sir, these observations I have made to you, without attending to, or considering the particular situation of those burghesses, who claim these rights; but there are some particulars belonging to them, to which I beg your attention, because, as it seems to me, as far as favors, or the nature of their claims are to be regarded, no men are less entitled to any, than these: it struck me, when I first heard the date of one of their indentures of an apprenticeship; and the first I heard mentioned, I see it is not in the list I have, was in 1757—that you see was near eighteen years before the time they applied for admission; but I see besides, that here is one in 1725, two in 1727, one in 1739, others in 1740, in 41, 44, 46, 47, 48, 49, and 1753; and the latest are 1761, and 1765. Why, Sir, if rights of this sort, after having lain dormant for between forty and fifty years, are in a hasty way to be submitted to, and complied with, what a door is opened for
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imposition? Here is a man, who produces an indenture in 1775, which appears to be executed in 1727; that is forty-eight years before; of course he would have been out of his apprenticeship forty-one years: what story may he not tell? how few men can be alive, who can give any sort of an account of such a man's apprenticeship? even of those alive, their memories must be extremely faint to transactions that have passed so long before; but, in the course of nature, very few would be upon the earth, who can possibly go back to the time of such a transaction. Is not that opening a door to infinite fraud and imposition, to give countenance to such rights? But still farther, does not the staleness of such demands, pressed just at the eve of an election, when men have a spur to do that, which they have neglected to do for twenty, thirty, or forty years; does not the time, when they are made, beget the strongest suspicion, and do they not shew to you, in the clearest manner, the wisdom of that bye-law, according to which, you will observe, these men have never yet been admitted? for that bye-law requires, that at one common-hall the claims shall be stated, that at a subsequent common-hall the man shall be admitted. Now, if I had desired my friends to lay before you proofs, shewing the great utility of such a constitution; if I had desired them to state to you a case, pregnant with suspicion, and which ought to put those entrusted with the power of admission particularly upon their guard, my imagination would not have gone to any stronger than this, my friends have laid before you; because here are several men, who have acquiesced for forty and more years, not attempting to get possession of their rights, and the hour, the moment, when they think it is fit for the corporation

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to be forced to admit them, is at a minute, when a contested election is approaching; when men's passions are called upon most to do that, which is wrong; and besides the interests of party, other motives are not wanting to provoke men to commit frauds. I perceived, in making out one of the men yesterday, who was a freeman, who had had an apprentice bound to him, there was one Robert Creswell; now, how is he proved to be a freeman? the books of them are lost, but the index is produced to you, in which you find a man, of the name of Robert Creswell, was admitted a freeman in 1690; that is not above eighty-five years ago: why, this is carrying us back to dates, which are necessarily involved in darkness and confusion, and where, whatever story is told upon one side, it is next to impossible to find evidence to meet it upon the other: who can prove, that this is the same man, whose rights they are now about to enforce? who can tell, that his apprenticeship did actually serve him? all this must be left in utter darkness, and it is impossible, that upon such a subject light can be thrown: and other instances I recollect, two or three that my friend commented upon, that here was a service not properly proved; and Mr. Harrison, the surgeon, (it is a fine way of proving a service) says, I went away from Derby to-day, I returned again a year after, I saw him then; and that is a proof. he served the whole year: another proof is, a man thinks he remembers an apprentice served four or five years, and that is to be proof he served seven: and all these are upon old claims, scarce so little as where the apprenticeship expired ten years; several were expired forty. Why, there is hardly any right, which a man can possess in this country, or any other, for all laws prescribe limits,

limits, beyond which rights shall not be enforced, be they ever so clear: there is hardly any right a man has, which, if he omits in a legal way to put himself in possession of for a certain number of years, less than appears here, he would not be absolutely deprived of: let your title to an estate be ever so clear, if unenforced for twenty years, by the common modes of recovering estates, it is gone. Now here, attempts are made to enforce these rights to burgessships, at a time, when frauds are most to be apprehended; and at such a length of time, that the rights to estates in many of them would have been barr'd, and taken away. You may have observed too, Sir, as to these same freemen, to whom so much regard and tenderness is due, that it is not only these twenty-seven, that tendered their votes, for this same book, which is put into my hand, this printed book, containing an account of the poll, shews you, that eighty-nine tendered for Mr. Coke, and three for Mr. Gisborne; so ninety-two tendered at the poll. The persons, who are intrusted with the admission of freemen, have enough to do; a pretty arduous task I should think, to enquire into the rights of ninety-three freemen; every man knowing, that at this time, when the occasion pinches, the election is at hand, that every man will struggle to the utmost; his friends will do all they can to throw in every circumstance in favor of his rights—It is a pretty arduous task for those, who are entrusted with the books of the corporation, to examine, at so critical a period, the rights of ninety persons. Not only ninety polled, but sixty odd applied after the election to be admitted; of these, it is clear that thirty-seven had no right at all; twelve appeared to be non-resident, the other twenty-five or six could not make out their right

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at all; why then, how did the others make out their right? and indeed, how did they attempt to make them out? which is a material circumstance, that you will attend to: how did they attempt to make them out upon the 5th, and 9th of January? Mr. Wilmot could not remember, that they had any other evidence besides the indenture and certificate; and, for what he knew, there might be fifty more in the street, who were ready to prove their services: but Harrison, the surgeon, told you, with great frankness, that he was perfectly clear, and well satisfied, that no other evidence was thought of, but the certificates and indentures: and then my friends very triumphantly ask, Sir, was any other evidence ever required? was not this that which was usual? In common cases, where men apply in a year or two after their indentures are expired, if they produce their indenture it is enough, the corporation may know—Oh, yes—I remember John Phillips an apprentice; and in recent times it may be enough: but, good God! if a man produces me an indenture in 27, 29, or 40—instead of going to 40, I will go to 15 years; what! am I to be satisfied with the sight of the indenture? and say, O Lord! this is all right—Oh—this was not made for the purpose; I am satisfied you and your master, who are both in the interest of some candidate, would not be guilty of collusion. I am to find out by instinct that you served: the master has given up his indenture; and some produce, they tell you, two indentures: what is all that to the purpose? they come at a time, when, having rested so long without endeavouring to give effect to their rights, it must beget suspicion; they come at a time, when all sorts of frauds are to be apprehended; and they think, that producing an indenture, that is forty years

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old, is doing the business compleatly. I should, if I had been in the mayor's place at any time, and had such pretensions as these offered to me, and especially many of them at a time, I own I should have waited long and long, before I should have admitted such men, because I should have conceived, that the acquiescence for so long a time ought in this case, as it does in all others, to furnish the strongest reasons against such a claim. If any man pretends a right to an estate, or any other thing, and, having that pretension, sleeps from one year to another, to fifteen or twenty years, without endeavouring to get possession of it, is it not to every human breast a strong argument, that he suspects his own claim? and does not think he can, in a court of judicature, properly enforce it? The same suspicion arises here most strongly, and the time, when the claim is first made, gives peculiar strength and weight to such a suspicion. Sir, besides this, we have to prove to you, which upon this head is confined to your present consideration, upon the twenty-seven—it is a fact, I believe very well understood; two or three instances of those very six that were admitted upon the ninth, in which it very soon afterwards appeared, that the mayor and three aldermen, who had taken upon themselves to admit, had been imposed upon: one of them in fact had never served seven years, nor any thing like it; his indenture had been given up to him: and, indeed, that very circumstance of giving up indentures, which was used by my friend, as a proof of an apprentice having served, is just as good an argument of his not having served; for if a master is sick of his apprentice, he will give them up to him to get rid of him, and you will never find out from this indenture, whether that apprentice was idle and

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ran away, and his indentures were given up, or did serve his full time: these are in substance the observations, which I have to lay before you—my friend will supply many I have omitted. It is a single question before you, whether Mr. Gisborne or Mr. Coke is legally entitled to sit in parliament for Derby; and that can only be decided by a majority of legal votes: and I submit to you, as I have submitted before, that none can be legal votes, but the votes of men, who were actually in possession at the time, or who had applied to be admitted in a constitutional manner: and if this rule is adhered to, and you consider nothing but that, which I trust you only will consider, we have a majority of legal votes; I shall sit down with the fullest confidence, that Mr. Gisborne will have a majority of them. You have been desired to attend to something else, and my friend, sometimes gravely, and sometimes humorously, endeavoured to substitute other arguments instead of the rules of law: should ever that happen to be the case, Sir, there would but one rule remain for the decision of questions like this; and that would be, who is the favorite candidate: for, Sir, if these judicatures, which you now constitute, should once think themselves at liberty to free themselves from the fetters of the law, and indulge a latitude of thinking, very bewitching and tempting, and to take into consideration what is called equity, convenience, and utility, should that once be adopted as a rule of judging, why, then that rule would certainly lead a committee to adopt that man into the house, who is the fittest representative for the place, the best member of parliament, the ablest senator: and who would be that fittest representative, the best member of parliament? why, it would be

that man, who happens to have the greatest interest with, and to be the favorite of his judges. This would be the only criterion, as it was in another place, if that rule of judging, for which I contend, should ever be departed from; but, I trust, it never will be departed from; and if it is not in the present case, I sit down with the fullest assurance, that Mr. Gisborne will be determined to have a majority of legal votes; and as such, be entitled to hold his seat, of which he is now in possession.

*Mr. Bearcroft says to Mr. Lee:—*Mr. Lee, state your facts.

Mr. Lee. The voter's name Samuel Johnson, the witness Thomas Key: I call him, if the fact is not admitted, to prove, that he himself ran away, and the apprentice did not serve his time out.

A Member. Is that one of the six?

Mr. Lee. Yes.

THOMAS KEY *sworn.—Examined by Mr. Lee.*

Q. You are a burgess of Derby, I believe?

A. Yes.

Q. Do you know Samuel Johnson?

A. Yes.

Q. Was he an apprentice to you for any time?

A. Yes.

Q. For how long?

A. He was bound for seven years.

Q. Did he serve those seven years?

A. He did not serve me five.

Q. Where did he go to?

A. He ran away to Nottingham, and was there some time.

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THOMAS KEY *cross examined by Mr. BEARCROFT.*

Q. Are you acquainted with him, friend?

A. Yes.

Q. Pretty intimate?

A. Too much intimate for my interest.

Q. Which side did he tell you he would vote?

A. He intended to vote for Mr. Gisborne, if he had been admitted, but he was a pauper.

Mr. Bearcroft. Now as to the other men, that were admitted, I understand there are objections against them, as the gentlemen insist upon the law, which I cannot go upon on one side or the other: they insist, that he was bad upon the account of his non-residence, at the time of his being admitted—we shall not have occasion to enter into that.

Mr. Lee. The other names are William Masey and Charles Harrison, non-resident at the time they claim, and consequently bad.

Mr. Bearcroft. I admit the fact, that they were non-resident at the time of the claim: I don't admit the law, it will not be necessary.

Mr. Mansfield. It was understood, that nobody had a right to be admitted, but what were resident—It is only to shew, that, in those six that were admitted, the mayor was imposed upon.

Mr. Bearcroft. Then, for argument sake, I admit it, reserving the right, if it should be necessary to go into it—for that purpose, as far as argument goes, I admit it.

Mr. Lee. I give it up to the committee, as one of the essentials of a vote at Derby.

Mr. Bearcroft. I have no objection to its being taken so, as for the purpose of the present argument.

Mr.

Mr. Lee. I wish the bye-law of 1743 may be read, that it may be before the committee.

The bye-law the 10th of December, 1743, read.*

A bye-law the 10th of November, 1701, read.

10th Nov. 1701. " At this common-hall, it is
" resolved and agreed, by all persons present (*nem.*
" *con.*) That it hath heretofore constantly been the
" custom, and so remains at this time, that no per-
" son or persons whatsoever ought to be admitted,
" and sworn a burgeses or burgeses, freeman or
" freemen, of this borough, unless such person or
" persons be of the age of twenty-one years; or
" unless he or they be born after his or their fa-
" ther or fathers was or were sworn a burgeses or
" burgeses of this borough; or unless he or they
" have served as apprentice or apprentices to some
" burgeses or burgeses dwelling in this borough for
" the space of seven years; or unless such person
" or persons be dwelling and resident in the bo-
" rough at the time of such his or their admittance
" or admittances; nor ought any person or per-
" sons to be sworn a burgeses as aforesaid, that hath
" served as an apprentice to any foreigner, or clan-
" destinely to any burgeses in this borough; nor
" any person or persons, that are, is or shall be
" born out of this borough, although his or their
" father or fathers was or were then burgeses of
" this borough."

Mr.

* This bye-law is recited in the first arguments.

*Mr. LEE follows Mr. MANSFIELD, and observes
upon the case —*

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THIS cause is at length brought to a very single, and a very short point; and feeling, as I do, very sensibly, the difficulty of adding much to the arguments, that have been offered with the greatest force of language, and the greatest possible precision, by my learned friend, who went before me, I should hold myself very inexcusable, if, having not much to say, I should take up a great deal of the time of the committee: that I am satisfied I shall not do, because it seems to me, that the subject is not much assisted, nor the argument much helped, by being laid before the committee in a diffused way; for all that I can say upon the subject, will fall within a very narrow compass. The question is simply this: Whether, under the circumstances that have been stated, and admitted before this committee, these men are to be considered, as having been in full possession of the franchise at the time of the poll, and ought now, upon that principle, to be added to the poll? That is the single question. Now, Sir, in the first place, this proposition is perfectly clear, that these men did not tender to be admitted according to the law and custom of Derby; that is a proposition clear, and admitted to be true: — But, Sir, it is contended, that these men, though they did not tender according to the custom of Derby, but tendered in a way, in which they would not have tendered themselves, had they known that constitution, and to people, who, if they had known the constitution, would have exercised no jurisdiction upon the subject

ject neither ; that is, the mayor and three aldermen :—Yet, because these people did it ignorantly, and because they knew no better, therefore they are entitled to all the benefit, and to all the advantage, that would have attended a proceeding, prosecuted with full knowledge, and conducted with exact accuracy ; and that these men, who erred from the beginning to the end, are entitled to just the same fruit, as if they had not erred at all : that is the nature of the argument, and it is an argument against principle, that my friend admits, and he has not yet contended any such thing ; but for fear he should touch upon new ground in the reply, that he did not at all go upon in the opening, I will just observe, that he has not contended, that the practice, first began by mayor Eaton, in 1772, to admit singly, afterwards changed into this new mode of admitting by the mayor and three aldermen, makes the law and constitution of Derby : he may say that, for any thing I know, but, I hope, he will not. I understand his admission fairly to be, that, not at the time of this election, not in the year 1772, but at the hour of the tender : and at the moment of the agitation of this question, the law of Derby is, that the common-hall, and the common-hall only, can legally admit : that I suppose to be my learned friend's admission, and if he had meant to contend the contrary, it is enough to say, that a practice against all usage, that a practice against the express verbal constitution of the place, could not have made the *Lex loci* of Derby. Now this being the nature of the question, it is very singular, that no case has been cited, no dictum quoted for a position, which my friend would now establish by argument, and which he would have you act upon, upon the circumstances of this case, at the same time, that it is in direct

rect battle array against a plain principle of law; that no man ever did set about to dispute, which is this: That, in the first place, it is necessary, to constitute a voter as a freeman, that he should be admitted; that is the general principle, nobody can deny it: there is nothing clearer, than, that a man, elected a burgess, not sworn and admitted, cannot act in the character of an honorary burgess; there is nothing clearer, than, that a person, entitled by birth, cannot vote in the character of a son, 'till admission and swearing; there is nothing clearer, than, that a person, claiming by an apprenticeship, cannot vote in consequence of service, but he too must be admitted, and sworn. But this principle has an exception to it, and within that exception my learned friend would bring all these men: that exception is this, that, wherever that admission has been refused injuriously, by the men that can confer it, by the men that ought to confer it, because they have been asked to confer it; the law will say, that, what in these circumstances ought to be done, and legally could be done, shall be considered as done: that is the principle of law, because the party did all he could do, with the best information upon the subject; no ignorance imputed to him, no negligence imputed to him; he did all that mortal man could do, with the best advice, and best information upon the subject, and yet he could not get the fruit of his knowledge, and of his industry: that is an injury to any man, and a court of law would say, that injury no man shall suffer. But, Sir, was it ever said 'till this cause; I take upon myself to say, that it never was argued by any lawyer, I wish my learned friend would cite the authority, if it ever was argued, that a person, conducting himself ignorantly, should be in the

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same condition, as if he conducted himself wisely; that a man who knows nothing of the constitution, and acts accordingly, shall be in the same condition, as if he knew it; that is not only against all usage, and circumstances, but against all plain, clear, indisputable maxims of law; not positions that want the proof of particular cases, and adjudications of particular times, but that have acquired a weight and a dignity, that they themselves carry conviction along with them: why, the law says, wise men and fools are not put upon the same footing; it is the *vigilantibus non dormientibus*, to whom the maxim of law applies: if a man neither knows what the law is, nor advises with those that can tell him; or if the people, who from their situation were likely to know, actually do not know, the consequence is, that all persons, especially all third persons, that had nothing to do in that matter, and Mr. Gisborne, as that third person, has a right to say, be your ignorance, or knowledge of the law, or your state what it will, I see you have not done what you ought to have done to have compleated your title, and I take the advantage of it. I take the law to be perfectly clear upon that subject, and when I speak to this committee, I should hope there would be no difficulty in persuading fifteen such gentlemen, as now hear me, that it would be extremely dangerous indeed, even for what you might think, if you could think a good end; that is, if you could think it were right, that these men, because they don't know the customs of Derby, should not suffer by their ignorance, though the law says they shall, and they must: but if you should think it hard, I hope it will be no difficult matter to persuade this judicature, that it is too much and too dangerous to subvert plain principles

ples of legal proceeding, (concerning which, the precedent will not stop here) for the sake of getting at any end, if it were far more laudable, and demanded much more attention than the present: no end can sanctify such means; because, if you overset all legal principles, and subvert those, that have been deemed clear maxims of the constitution of your country, you have no law left. Now, this being in my apprehension clear and admitted, that the men did apply ill, and that they did apply to men as ignorant as themselves, for I think there was no occasion for the observations of my learned friend, Mr. Mansfield; if there was, they are decisive, and will strike conviction upon every man's mind; that neither Mr. Eaton, nor any of the aldermen, or those ninety-two men, had a doubt, that this mayor and three aldermen had a right of admitting. My learned friend's opening is abandoned, for he stated it as the ground of all his case; you remember, he said it is to be sure necessary for me to prove, that we applied in the proper way; his words were these: "We applied to the mayor and three aldermen, to whom, by the charter, a power is given of admitting burgesses by birth and by servitude." Now, if my learned friend was not ignorant that this was a mistake, if Mr. Coke, who lives I suppose in the neighbourhood, was not ignorant that this was a mistake, and all his sagacious agents were not ignorant that this was a mistake, who live in the neighbourhood, I am very willing to suppose, that these ninety-two men, and that Mr. Mayor, and the rest of the aldermen, had adopted that usurped practice of Mr. Eaton, in the year 1772, and thought no more of it; nay, I think it was said by Eaton, or Lockett, or some of the witnesses, that the matter had once been a

question of enquiry ; I think they said, the opinion of a learned counsel had been taken upon the subject, who had given it as his opinion, that the mayor and three aldermen could by the charter admit ; my learned friend now admits, that it is a mistake, and that there is no foundation for that principle : but supposing that Mr. Mayor did verily think that he could have done it, and he could not ; why then the necessary consequence follows, that Mr. Mansfield plainly drew from it ; that if no word had been broken, but the men had been actually admitted ; and if there had been no appointment to meet upon the sixteenth, but an absolute refusal had been given, why, what is the consequence ? these men would have been driven to their mandamuses, they would have acted upon their knowledge, they could not have been wiser than their teachers, they would have brought their mandamus to the wrong persons, and it would have been decided in a court of law, that they had no title at all : but, because this mayor is supposed to have erred, or is supposed to have acted upon bye motives (I don't care whether he is or not, for it don't avail at all in the present question) these men are to be put not only into a better condition, but totally reversed to what it would have been, if he had given them a plump refusal, and told them to go to the law, or where they would for their title—I will not give it you. If the mayor had said, I know you will vote against my friend, and for my enemy, and I will not admit you ; in that case they would have gone to their mandamuses, and they would have been no wiser than my learned friend ; and I think it very unreasonable, you should think these cobblers and tinkers of Derby should have been wiser. None of them could have been freemen, for unless they had

had brought a mandamus contrary to the way, in which he stated the right to have accrued; unless they had had a mandamus to the mayor to call a common-hall, and another mandamus to that common-hall, when called, to admit; unless that had been the way, they could never have been admitted at all. This mode was never suggested to them; they know nothing of it, and not endeavouring consequently to put it in use. I submit, they are no more freemen of Derby, than any other men that could be stated. But, Sir, I cannot help saying a word or two upon the very peculiar circumstances of this notable case: for, Sir, it was attempted in the opening—Mr. Bearcroft stated in the opening, that this was a case so gross—ninety-two men tendering, ninety-two men polling; all rejected—

Mr. Bearcroft. I said forty-two, but I will not quarrel about the men in buckram; it shall be ninety-two, if you please.

Mr. Lee. Ninety-two men tendered for their admission, ninety-two men tendered at the poll. Now, how turns out this fact? Mr. Lockett, their own witness, swore, that there were twenty-seven admitted at the common-hall, which is the admission they now have: there were thirty-eight rejected, which, they say, turns out now, upon an accurate search, to be forty: but he stated twenty-seven admitted, thirty-eight rejected, and the rest, which came to twenty-seven, never shewed their faces, never demanded it at all at the common-hall. Nor has my friend examined one single tittle of evidence to shew, that any one of them has any right at all: it has not been attempted in the course of the cause.—Now if this Mr. Mayor did behave so ill, in what did his misbehaviour consist? Is it misbehaviour of Mr. Mayor, that, in the hurry of an election contest, upon the day of canvass,
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he has not selected accurately, out of ninety-two men, who offered to him, precisely that twenty-seven, whom, it is said, he ought to have admitted? Why, Sir, there can hardly be a grosser case stated, than that this immense majority, who ought to have been admitted by the Mayor in this irregular fashion, are a set of men, that two to one, had no title at all, a great deal more than two to one, and that, it is not contended now, had any title at all; nobody attempts to set them on at least. I say, as to the people, they never shewed their faces, which were the same number of those, that were actually admitted, and of those that were rejected, a much greater number than either: I think I have a right therefore to put the twenty-seven to the thirty-eight, and then you have sixty-five that have no colour of title out of ninety-two; that is the state of it as it strikes me; and I am satisfied my learned friends can hardly vary that question. I do apprehend, that it can hardly be conceived, that in the borough of Derby, of which there is not an instance, nor can be shewn an instance, of any number of men at any time, they have not attempted to shew it in the borough of Derby, that, at any time, there was ever an attempt to make an influxion of new voters, previous to an election, and at the eve of it. It is of the first impresson; there is no such thing as we know of, no such thing is attempted to be proved: and when this is attempted, for the first time, you see this gentleman is called upon in this new irregular, and, as my friend admits, unlawful mode, to put, into the condition of being freemen of this borough of Derby, more than two to one, having no colour of title whatsoever. — I will not go into the observations, which Mr. Mansfield made, and made with very great force, upon the dates of the indentures, the
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antiquity of their title, and the difficulties consequently of coming at truth, and stating all the circumstances of persons at such a long distance of time: they deserve, I am sure, all the attention he prayed the committee to pay them:—and it must certainly open a door to a great number of frauds, upon such a little notice, and in such a state of the borough; men's minds agitated with zeal, and desiring (as I hope the committee will give me leave to observe) to produce evidence of their title, not the most creditable at least. Why, Sir, need I desire you to remember one instance, that instance of Mr. Wedgewood? Does it not prove this position, (for I mean to carry it no farther at present) that men will not at such a time stick to delicate practices, they will not confine themselves within delicate conduct? As a means of getting invested into the franchise of Derby at this time, Sir, are you to wonder, that a man, whose indenture is fifty years old, should call witnesses to prove service, should call witnesses to prove handwriting, to testify facts, that are buried in such obscurity, that nobody can get at them? When you see another going to get the manufacture of a register, that manufacture proved by the agent in the cause, who told you, he did not think it of any importance to mention it to any one person; one would think the case was not new to him, that it was not the case of Wedgewood only, but of Tom, and John, and William, and nobody knows who; why then you see such a circumstance as that, at such a time, it must make you exceedingly jealous, I am sure it ought to make the mayor and aldermen exceeding jealous and suspicious; and in my opinion it justifies the answer, which was the substance of the mayor's evidence; “there was such a number of people whom we knew not, that it

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“ confirmed us in our opinion not to admit them :” but the event confirmed them above a thousand arguments, which is, that if they had done that, which they were prayed to do, they would have admitted three unentitled for one entitled. Now have they in truth, with all the diligence, (and I give the gentlemen credit for the exercise of all the diligence, that could possibly be excited upon such a business) have they now substantiated all these twenty-seven? Why, no such matter; it would not answer their purpose if they had, for if they had been all clear indisputable voters, still the committee would recur always to that principle, which must be decided, and which, I am sure, the committee cannot forget; if there was not a colour of objection to their title to be admitted, they must still apply to be admitted in the regular way, not being invested with the franchise: now they are all good freemen, supposing their titles to be good, because they have been admitted at a common-hall; but they were not good freemen before that common-hall, and they can derive no sort of validity in this respect from a posterior right to admission. As to the few that I did attend to, I will give you in two or three words the minutes that I have of them, and the observations that arise concerning them. The committee will be so good as to see, whether these observations of mine are not well warranted by the evidence:—As to Bilson, it was proved, I think, that he was an apprentice to a Mr. Saxelbye, and did serve. With respect to Mr. Clarke, Mr. John Harrison, surgeon, was called to prove his service: he proves that he was an apprentice to James Lane Baker: being asked if he knew whether he served his time, he says he cannot tell, for he was a year absent during the time, and he knows nothing of what happened in that period; but

but when he left Derby, and returned again to Derby, the apprentice was in his master's service: that is the evidence. Now, Sir, I have always understood, that where the question to be proved is a length of time, any chasm in that time is an objection to the proof: my learned friend knows very well that it would be laughed at, as perfectly preposterous, if a man was to shew that a man was hired for a year, and served a year, by shewing that he was in his master's service at the beginning and end of it; and that no human creature knew what was become of him in the interval: and as to Mr. Balguy's saying, that it is presumptive evidence, that is nothing to the purpose; they take upon themselves to prove the fact, and to put this man upon the poll; and a man tells you, that for a year I don't know what became of him: it seems to me, that if there can be a chasm, in any proof, it is in this.—The next case is more extraordinary still, because they are cases, that at once shew the voters to have no title; and shew, in my opinion, a very ardent disposition to impose a false and fictitious title upon the committee; and these are the two cases of Hancock and Maddox—You very well remember, that Mr. Hancock (for the apprentice and master were of the same name) Mr. Hancock was called upon to establish these two votes, which were stated by Mr. Balguy to be exactly in the same circumstances; and so they are: now what are those circumstances? the principle being, it is not denied, that a man must, in order to be entitled to his franchise as an apprentice, he must serve all his time with a resident burgess; that is an admitted principle, stated and proved; that entry that has now been read in 1701 so says, and there can be no doubt about it: if that should ever be a question of fact, why then

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either Mr. Eaton, or Lockett, or indeed all the witnesses they called, will, with one unanimous voice, confirm it, that that is the principle—Now what is the fact of these men? there were three partners, two not burgeses at all, one who was a burges, but resided forty miles from Derby, and yet that man, Hancock, came and proved, with the utmost regularity, that he served him, that he served a Mr. Goodman; he said not a single word about his not being a burges, 'till it was suggested to me, for it is impossible for us, sitting here, to know who are, and who are not, burgeses of Derby; he thought to have got away—"This man served me, I live at Derby;" but when he was interrogated, Pray are you such a man, as can confer any right to your apprentice? No—Why then, who was? Was not Mr. Goodman the burges, that found all the money in the trade? Yes—Was he a resident burges? No—Then is it not impossible to support this man's title? My learned friend says, this is the strangest doctrine in the world, necessary to serve a resident burges—Why, have not the town the benefit of the man's service? why so they would, if he served to me, if I lived there; but if I was not a burges, I could not make him free: I don't know that freemen work harder than non-freemen, I believe in general not so hard. Corporation laws, instead of promoting industry, generally lessen it; that doctrine would blow up every principle of corporation law, for the wisdom and propriety of which though I don't contend, yet this I do contend, that while they exist, you are not a competent authority to subvert them; the house, of which you are a part, may subvert them perhaps in due time; but you must give validity and force to the regulation, so far as is consistent with the law of the

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the land ; concerning which there is no dispute in the present case—Then I submit to you, Sir, that these three apprentices have no colour nor right at all ; and that if they had been examined into, either before the mayor and three aldermen, or before the mayor and common-hall, they had no title at all, and yet these are the men, that anterior to admission, and without admission, are, they say, entitled to stand upon the poll, upon no examination, without an examination, and upon a tender : these men, who, when their titles are enquired into, with all this subsequent information, can shew no titles at all. Well, but this is not all ; the next matter is a point, that was agitated too much perhaps, when the case occurred, and that is the case of Thomas Jones, whom Henry Cowley proved to have served his father, in consequence of an assignment from one Joseph Holmes, to whom the apprentice was bound, but served not a day—all this testimony depends upon, what they call, the turn-over, the assignment, of which they gave no notice to produce, never said one single word upon the subject, though they gave notice of the indenture, none of the assignment, none at all, and wanted to impute to the mayor, a suppression of that indenture, they having the counter-part of the indenture in their pocket ; which shews, that he was not bound to this Cowley, but to Holmes—I submit to you, Sir, that that evidence was totally incompetent : the committee said they would reserve it for observation after, but I do submit to you, Sir—

Mr. Bearcroft. I conceive it to be decided.

Mr. Lee. If the committee did determine, that the evidence of the assignment was given under these circumstances of no notice to produce it—

Mr. Chairman. They were admitted to give evidence of the assignment ; what the effect of the

evidence was, is not now to be determined ; the opinion of the committee was, that they should enter into evidence of it.

Mr. Lee. If the Committee thought they were at liberty, under the circumstances, to give evidence of an assignment in writing, without having given notice to produce it—

A Member. It is open to your observation, but that evidence is not totally incompetent, because we have decided it shall be admitted.

Mr. Lee. The observation I make upon it, with great deference to the committee, is this, That if people, knowing, as they are supposed to know, that the validity of this man's title depends not upon the indenture, but upon the assignment of that indenture ; they knew it, for Mr. Harrison, the surgeon, is afterwards called to prove, that at that very common-hall he took down not only the title, but the turn-over, and he shewed that note to the committee in different ink, and wrote, I will not say at a different time, for the man said it was not ; but wrote, with a different ink, and bearing all the marks of a subsequent manufacture. Now, Sir, this being the case, I say they knew at that time, that this title of service under Cowley, or Too-ley, was not by the original indenture, which was to Holmes, but by an assignment in writing, which was to Cowley ; that assignment they don't pretend to have given us any notice of ; and the counter-part of the original indenture they have in their hands, and they produce it : and yet it is very singular, that these people, when they give notice to Mr. Mayor to produce the indenture, should not, upon the notice which the committee saw, say one word of the assignment ; and that this assignment should be mentioned in Harrison's paper in a different ink. It seems to me to be a mere

mere after-thought, and a catch, and an attempt to substitute, under the idea of giving a notice of one thing, evidence of another thing: but if the committee think that evidence is competent, and have decided it, I shall say no more about it. The next is the service of a Mr. William Sale; he claims by an apprenticeship, and the title is supposed to be proved by alderman Eaton. The evidence alderman Eaton gives of it, is, that he was an apprentice to Joseph Frearson; he cannot say how many years he served; he might, for what he knew, have served his time, but he cannot say how many years he served: and this, my learned friends, not thinking sufficient proof of service, they, as I should think, did not chuse to leave it upon Mr. Eaton's account, they called Mr. Yeomans, and he, instead of supporting him, as I have taken it down, says he cannot tell you how long he served; and this is the evidence, upon which Sale's title stands. Now, Sir, I do conceive, with great submission to the committee, that if this was the moment, that was now to determine in common-hall, whether these men should, or should not be admitted, which is by no means the question before you, but if it was now the question before you, there is not one of you, if constituting part of that common-hall, that would not say, as to these five men, that they have not proved the title. I am most confident, and sure of it, as to four of them, and I think so as to the fifth: but there is not a colour of doubt, in my opinion, that as to four of them, they have proved no colour of title in the world; and yet these men they did not so much, when they tendered themselves, they tendered no proof: for I asked the gentlemen, whether this very evidence, upon which they now would rest their title in this committee, was attempted to be
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given before the mayor and three aldermen at any time, or even before the common-hall? it was not, according to two of the evidences. I asked the question, if they certainly were not then tendered? and a man did then say to the mayor, reject these men if you like, but these are the men: here are old papers, fifty years old, called indentures, and manufactured registers, in spite of all these old papers, fifty years old; and these made the other day for the purpose. This is that kind of testimony, upon which these persons are conceived to be entitled to be reckoned burghesses, by those people, who did not admit them, because they thought they could not; and who could not have admitted them, if they had thought they could. If all these men had been actually admitted, previous to the election, and Mr. Gilborne had known then, what his counsel know now, and Mr. Coke's counsel know now too, my friend would not have said that their title could have stood: but they were not admitted, they had not that advantage, owing, not to the ignorance, as my learned friend said, of the people, but to their partiality. I apprehend that there is, by no means, evidence of sufficient partiality, to impute any bad motives, or any wish or desire to deny to any man that title, which they thought the man was entitled to possess. But, Sir, I will venture to go much farther, that if they had known it, which they certainly did not, and there it is bottomed; but if Mr. Mayor and three aldermen (whereas there was not one that knew any thing about the matter) had known that these people were applying in a wrong way, I don't think my friends are warranted to say, that it makes men's titles good, because another man does not confer upon them all the knowledge he might have conferred; not that I should have commended the
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mayor for doing it, I should have blamed him exceedingly, if he had known the mayor and three aldermen could not do it, if he had said we can admit you, and so lulled them into security; you have applied to the right persons, but we will take some time to consider of it; and it had been proved by other people, that he knew he could not do it, but a common-hall must, it would have been very blameable conduct. But Mr. Bearcroft admits, that this prevailing notion of a common-hall was thought to be done away, and that the mayor and aldermen, all the men, and every man in the corporation of Derby, all fell into this error and mistake, that people had power to admit, who had no power to admit. Then I take upon me to say, that if these men were in this mistake, they don't lose their franchise by it; they lose nothing by it, but their power of voting, which they would equally have done, if they had been sleeping in their beds, or got drunk on the day of admission; or if a man had broke his leg in his journey: any matter of accident would have had precisely the same effect; and these men are now good burgessees, if there is no objection to their title, but admission; they are now all good burgessees, for they are admitted at a common-hall, if there is no objection, upon which the Court of King's Bench upon a *quo warranto* would say, that, notwithstanding you have once been admitted, you must be turned out; which they would be in case of defect of title: and nobody can take objection to their admission, it is found and perfectly regular at present; but they had not this at the time when they tendered, they had not this at the time, to which my learned friend must refer their title, or they have no right to stand upon the poll: if you argue eternally, it comes to that position; why, but they did not know it, they
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are the objects of pity ; and so is every man to be pitied that is ignorant ; but you cannot, by pitying him, give him all the effects and consequences of knowledge ; that you cannot do ; you might as well attempt to rectify all the errors and mistakes, that ignorance produces in moral life, as you can all the effects that ignorance produces in civil life :— if a man is ignorant, and acts as if ignorant, he must take the consequences of his ignorance ; and that consequence is, that these people, not being in possession, nor applying to be in possession in a legal way, to those that could confer that legal right, they must be taken to be no more voters, than people that are strangers, and had not served their apprenticeship, or were not born of burgeses ; therefore unless you can shake every principle of law, upon which courts of law have gone yet, and unless my friend can satisfy you, that a person applying to a wrong person, is in the same situation, as applying to a right one, (which if my friend should assert, I am sure he will produce no case to support it) unless he can shew, that a person, neglecting by ignorance, is in the same situation, as if he had been in full possession of his franchise :—therefore I trust the committee will be of opinion, that these twenty-seven men ought not to be added to the poll.

Mr.

Mr. BEARCROFT heard in Reply.

IT now comes to my turn to beg the indulgence of the committee in reply, and I certainly feel a considerable burden upon my shoulders, since I am to answer the two very powerful gentlemen, that have argued upon the other side; and I should find no comfort at all, but that, notwithstanding the very big words, that have been used by both of them, I am very free to acknowledge, that I feel myself upon the right side of the question: I care not who hears me, for I am not at all conscious, that, in so saying, or in saying any thing that I shall trouble the committee with, I shall not still (to borrow a phrase from one of my learned adversaries) talk the language of a lawyer.

Sir, we are in truth come to the decision of that point, which must decide the merits of this election; for notwithstanding my learned friends have, for purposes that are very obvious to such old committee men as I see now before me, affected to say, that they have a case behind, even in case this point should be determined against them; and in order to induce you to believe so, they have niggled, rather than argued, with respect to the case of 4 or 5 votes.

—I see it in certain countenances, that I have seen very diligent in their attendance here, that it is not their success upon this point, upon the four or five votes, that will decide upon this case; unless you decide that we have not a right to any one of the 27 persons that tendered, under these circumstances.

The committee will be the more patient, since I consider myself as arguing the merits, and the decision of the present election; Mr. Mansfield has put his case with great artifice, but I think that I shall be able to detect him, and to trace him in his

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course, from the beginning to the end ; for though I admit, perhaps in that very circumstance of talking with so much artifice, that he has talked like a lawyer ; and though I admit, that every point of law that he has asserted, almost from the beginning to the end, is clear law, yet I trust, a very little attention and penetration will shew, that he has given the real question in this business absolutely the go-by ; and that I may very freely admit every thing that he contends for, but it does not touch the case, that now at last I combat ; for I admit, and I feel the awkwardness of the situation, in which I was originally put, (without my own fault, permit me to say) but it is the misfortune of legal warfare to be instructed in one case, and to find that your instructions fail you in point of fact ; and it has often happened, that my two friends have made a very good case from the wreck and ruins of their original case. This case is something longer, but I trust it is equally good, with that that I stated ; but let me not be understood ever to have stated, for I certainly never did state, that, in order for the petitioner to succeed, it was absolutely necessary for him to shew, that he had tendered himself to those persons, that absolutely had a right to admit : I have not found any such law, and my learned friends, who both of them are very ready to produce dicta and cases, have produced no such dicta and cases, to prove that that only is the law ; and that, in order to entitle men, who are not absolutely and formally put in possession of their franchise, they must tender themselves to the very persons, who have a right to admit ; and that no other case by any possibility can exist, by which they shall be entitled to their full franchise, as if they were fully admitted ; my friends have produced no such case : all that I said, when I thought that I had such cards
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in my hand, was, that I had them, and I put them upon the board at once ; I said, look at them, I have the victory in my hands ; and the gentlemen admit, that if it had been so, and we had tendered to the right persons, there would have been no question : it turns out, and I mean to meet the gentlemen fairly ; I should disgrace myself, I should dis-serve my client, I should ill treat the committee, if I did not fairly meet the gentlemen upon that point ; I am convinced, and I have been for several days, and therefore I will not attempt to alter it, or to controvert it, that the opinion in this borough ever since 1772, (however it arose) from the mayor to the beadle, the Gisbornites and the Cokites, the Peak voters, and all the rest were all of opinion to a man, that the right of admitting burgesses was in the mayor and three aldermen ; but coupled with this, permit me to remind the committee, that there was something else, that was as fully understood, that there was something else, that they were perfectly right in understanding, and to this moment are so ; and it is absolutely requisite to make a good burgess, and it is that circumstance, that the gentlemen have very artfully avoided touching upon ; it is that circumstance, in my apprehension, that will shew the committee clearly, that by the ill behaviour of the mayor, the ill behaviour of the aldermen, in the spirit of friends, and acting as agents to a particular party, and not executing their duty as they ought, we have been stopped in *limine* ; we could not go so far if we had known how, as to apply to the right persons to admit ; for the committee already understand perfectly well what I mean ; it appears by the charter, it is admitted upon all hands, it is the way the gentlemen wriggled themselves out of the charter, when I insisted that was the law ; the charter, said my learned

friend, who loves to talk Latin *, there is something to be done before : and said my plainer friend, Mr. Mansfield, the oaths to government are to be administered; and before all that is done, and done properly, you might as well have got the beadle to admit them:—agreed. Thus, then, stands the law of this borough, that before the admission by the common-hall, who are the legal persons to admit a burgess, the oaths to government are to be taken by the charter; not at a common-hall; for unless it so happens, that there is a mayor and three aldermen there, and that the act of taking the oaths to government is done before them, in that respect, as mayor and three aldermen, the admission at the common-hall would be totally void, and of no effect; so says the charter: this is necessary, this is previous; this the mayor stopt, this the mayor stopt (not intent upon this particular mischief I grant you) but meaning to stop every thing that was right and fair. And, I hope, I shall be thought to talk like a lawyer, when I say, that there are cases, where the wickedness of a man, *egreditur personam*, a man shall lose his life upon such a construction of law: if A, having malice against B, shoots at him, and does not hit him, but shoots C, against whom he had no malice at all, it is a decided case; it is murder. The mayor meant general mischief, he did particular mischief; he meant that these men should derive no advantage by the application. They were entitled to some advantage; he stopt all, in stopping some, because he stopt them in the first step: he was as effectual a bar to their carrying into execution their right, as if he and the three aldermen had ever so much right formally to admit. Sir, now I have mentioned

* He quoted the words of the charter in Latin.

mentioned this worshipful and worthy mayor, I mean to treat him as his noble friends have treated him, as one of their counsel, at least, has treated him; when they have used him in their dirty work, they throw him behind them: and Mr. Mansfield very freely says, why, it is not necessary for this purpose, and I will not set about to argue, that this mayor did right. My learned friend, Mr. Lee, who complained that Mr. Mansfield had left nothing for him to say, at last found that he was good-natured enough to leave that task to him; and though the farce*, the other night (with a name that suits this business) was withdrawn from the stage, you have been entertained with it this morning, and my friend has been washing the Blackamoor white: for when he has attempted to tell you, that this worthy gentleman, the mayor, acted in a conscientious and honest way, and when my learned friend has given you the number of arguments, which I shall go over one by one in their turn, as most excellent reasons, why the mayor forbore to proceed in this business: he would not have taken all this pains, unless he wanted you to understand, that those were the reasons that operated in the mayor's mind, why he did not do what he ought; for something there is that he ought to have done. Why, if my learned friend wants you to think so, I have only to call to your recollection, that you have seen the mayor of this borough, and the town-clerk—that town-clerk, an odd sort of a gentleman, not recollecting hardly any thing that is put to him, though the peculiar business of his office, and what happened only a little while ago; yet that town-clerk is as much honester than the mayor, as he is below him in his situation:

* The name of the farce was — The Blackamoor wash'd White.

situation : I believe him when he says he cannot recollect, it is his misfortune. I could not get an answer from the mayor, but " I don't remember"—" I cannot tell"—" I don't recollect."—Why, Sir, you recollect nothing about this business: let us come near the time: Were either of the noble Lords, the uncles of the Duke of Devonshire, with you last week? " Hay! the uncles of the Duke of Devonshire last week—What did you say, Sir? be " so good as to repeat your question." This was the demeanor of that gentleman; I appeal to your recollection if I mistake it: it was as ridiculous as it was infamous. I beg pardon for troubling you about this mayor, but I will keep my word, I will not soil the cause any more with mentioning his name.—Then to follow Mr. Mansfield in the way, in which he has endeavoured to put this case, and he has affected all through to be extremely fond of the law, as he calls it, and as he asserts it to be, in opposition to justice, in opposition to equity: whenever you catch lawyers talking in that way, though it may be, and we are sometimes driven to it, depend upon it, though it is the language of a lawyer, it is not the language of an honest man; and there is some snake or other in the grass: and do, gentlemen, for God's sake, do give so much credit to the law of England, though my two learned friends, who are great ornaments to it, don't choose to do it, though it is their own profession, as to presume at least, in every piece of law that you find, that there is justice at the bottom of it; it ought to be so presumed, and I have generally understood that lawyers have presumed it; but now and then ingenious men have fancied, that they have demonstrated that the law contains no such matter: if this is not a libel upon the law of England, I don't know what is
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a libel. The law then that is insisted upon, is, that these men did not tender to the right persons : the law, that is thrown upon me to contend for, and which the gentlemen have supposed all through I should contend for, is, that I want you to assist them merely upon the ground (for I take their language, I believe, I mean to be correct, as well as to state their idea and argument) merely upon the ground of ignorance : I don't do so, Sir, I don't contend, as a general proposition, nor any thing like it, that ignorance will excuse ; I know that the maxim of the law, since the gentlemen will be so formal, and black lettered, and some of them choose to talk Latin ; I wondered I did not hear *ignorantia non excusat legem* : but is there a general rule in any art or science in the world, that does not admit of many exceptions ? Sir, permit me to say, that there are different rules upon the subject of this kind of doctrine, to what there are upon those, which are generally discussed in Westminster-hall ; I don't do, as some friends of mine do, that are not here indeed, pretend to say, that election-law is a law paramount to Westminster-hall, and that it is totally different, and that you can get no ideas from one, that apply to the other ; but this is certain, that such is the division of jurisdictions in this country, that the subject matter of pure election law does not often occur there ; of course therefore you can hardly get any general decisions, that at the time they were uttered, ever could be understood to apply to these particular cases—I give the gentlemen the advantage of all general dicta, and maxims, that they find in the common law, as maxims, that will apply to every circumstance of justice, where justice is sought after ; but if you will fetch from the bottom of Westminster-hall, and bring up
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these stairs a maxim, which is true there, and say it shall be universally the rule in election cases, I deny that it is of that authority.—Well then, now for their boasted case—but for a case that applies to this, and fits it exactly (such as even my sanguine friends would apply, and call a case in point) they have not talked of; but they say, that in decisions it has often happened, that certain persons, who have not been in the formal, actual possession of burgherships, have nevertheless been admitted by the committees, and still hope to continue to be so; for all this is admitted to me, to have the full benefit of their vote, as much as if they had been admitted: say the gentlemen, the only case, in which that may be done, is the case of a tender to the particular persons, who have the right to admit; I deny it, it is a narrow way of arguing, when gentlemen can pluck me out one case, and say the law that is found there, is only the law in that particular case; and unless you will produce another that fits it at all points, it does not apply at all: I took the liberty to say before, I repeat it again, and still I hope I talk the language of a lawyer, when I say it, the use of cases, and the use my learned friends have made of them, or they would not cut the figure they do in their profession, is not to remember the names and circumstances of the cases, but to abstract the principle of law from it; then what does any man, that reads it, learn from it? why, that there are cases, in which it is not necessary to be formally admitted into a burghership, to have a right to vote for a member of parliament—There are some cases; what are those cases? Cases of the strict line of law? Clearly not, for what is the strict line of law upon the subject? It is, that no man shall exercise any part of his franchise, till he is actually invested, and

and formally in possession of it; but here is a case in which they may do it: why? because the law says so? no—the general rule of law is otherwise; but because that substantial justice, which the gentlemen have thought proper to deride (but thank God, ridicule is not the test of truth) that equity compels men's minds to assent to that proposition, wherever you find a case calling upon you to do the thing, and is as strong a case in point of equity and conscience, there you will do it, though it is not just exactly that case, that is decided: but don't mind a decision, that you should not do it in cases that stand upon the same principles; and I totally disregard the hard words spoke by my learned friend, who hates popery so heartily, and yet he turns pope, and damns people, bell, book, and candle, that differ from him: it is contrary to law, it is contrary to common sense, it is ridiculous and absurd: great words these are, they cover an argument, and make it look bold and frightful to be sure; but, however, they don't add much to the strength of it. You will attend, and see what is at the bottom: this sort of armour is worn in Westminster-hall, and upon lord mayor's day, but you never thought the man that wore it a bit the valianter man for it: but, gentlemen, I say therefore the case that I come with, is that case, and at this time I trust I shall not be laughed at, if I go on upon that line of conscience and of substantial justice, as much so as the case of the man that goes to the right persons to admit; he lives in a place, the law of which, I admit, is mistaken by every member of it: he applies—for what purpose? to be admitted; that is his phrase: the gentlemen take it for granted, that by being admitted he meant, and he was understood to ask nothing, but the formal admis-

sion of a burges: what pretence is there so to understand it? that the mayor (little understanding as they say he has) in order to save something, that ought to be more dear to a man, the possession of which is infinitely more valuable, did not the mayor (dull as they would represent him) understand him otherwise? I say he did, his actions shew it; those actions, that appear by other witnesses, and don't depend upon his recollection and remembrance:—You remember, Sir, upon the 5th of January, in the morning, Mr. Coke applies—for what? in the same phrase, to be admitted a burges—what does he set about? giving him the oath of fealty to the corporation, the admission oath of a burges? no such thing; he knows what is necessary; he thought he might do that too, I agree, I believe it—but what does he set about? administering the oaths to government—

Mr. Chairman. I did not understand that to be proved.

Mr. Bearcroft. To this instant I understood it to be so: I thought the swearing had commenced; I wish it had, it would have been an additional argument; but I trust we shall do without it; he was frightened rather too early, though he took the book, and put it into the hand of my friend; the alarm was instantly given, that there were other persons, that claimed to be admitted: we don't learn from the act of the mayor, what was the oath that he was about to administer; but since it is agreed upon all hands, that the manner of admitting is first administering the oaths to government, and then the oath of fealty to the corporation; and since that first oath to government must be before the mayor and three aldermen, I think it is pretty clear, that was the oath he was going to administer: but, however, that
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was the manner, in which those persons were admitted, that were admitted by the mayor and three aldermen. Sir, you see the way in which I have put it; there was a previous thing necessary to be done; he stopt them in doing that thing, that was necessary before the other could be done; it was as effectual a stoppage therefore upon that step, as if he had stopt them upon the last: I conceive that this mayor, with a design about which nobody doubts, with a design that one gentleman, and that but faintly, has endeavoured to clear him of, was in truth the man, who did as effectually prevent these men from being formally invested with the office of burghers, as if he and the other three gentlemen had had a right to admit them.

Mr. Lee. I conceive this to be a ground entirely new; I am wrong in interrupting you, unless I think you want a foundation in fact: Mr. Bearcroft is now arguing, that though the mayor did not stop them as to the admission, yet he stopt them as effectually by stopping their taking these oaths; now that wants this foundation in fact, that there is no evidence, that any one man ever demanded these oaths.

Mr. Bearcroft. Am I not putting it so? that I have considered them as making an application, using the general word *admit*, and perhaps at that time not having in their minds, and I believe upon the other side, not having in their minds, those particular matters as to the oaths to government.

Mr. Lee. So explained, I am satisfied.

Mr. Bearcroft. So explained it was before, or I have been talking nonsense for a quarter of an hour. Here is an application to the mayor and three aldermen; it is notoriously known what they want, they want to have those things done, which are necessary to put them in formal possession of

their office : what are those things to be done ? First, the oaths to government are to be taken before the mayor and three aldermen ; next there is to be their formal admission at a common-hall. They promise to meet for the purpose of admission : why don't they do what they can do ? this would have been one step, and then indeed, if we had stopt short, they would have had a right to lay it all upon our ignorance ; but since they have prevented us in taking the first step, we have a right to lay it all upon their iniquity—Another thing—the mayor is head of the corporation ; the mayor did not know, why then he was ignorant ; but the mayor might have summoned a common-hall, if that was the law ; and we suffer as well by the ignorance of the mayor, and of every creature in this corporation, as we do by our own : but something might have been done, something ought to have been done, that was refused with a bad spirit, that has as compleatly prevented us, as any thing else did. Now, Sir, permit me to perform what I undertook, and I think I can allow every thing that Mr. Mansfield has said to be law, and yet that he has not touched upon the case, as I have put it ; and I think, when Mr. Mansfield has stated many propositions of law, he has done what I have not usually seen him reduced to the necessity of doing, he has done nothing, but say the same thing over and over again ; stated the same proposition in different words ; for he sets out with saying, that clearly the ceremony of admitting to the office of burghers, was not in the mayor and three aldermen ; that is agreed ; he contends, that that kind of admission is illegal by the law of this borough ; I admit it, but he is not contented with my admission, that such is found out to be the law ; but he goes on in harder words to assert

assert nothing but the same thing over again; for having stated to you, that they had no right to admit, what more does he state then, when he goes on to say, if they had actually been admitted, they might have been ousted upon a *quo warranto*? So they might, because it was not a legal admission. Why, he only tells you the legal consequence—it is so—It is exactly saying the same thing; it is prancing, but it is not getting forwards: the same course he has taken again—two or three more curvets:—says he, suppose there was a mistake in the parish in an ejectment, that a man brought an ejectment for his estate, and he blundered as to the place where it lay, and said Hampstead instead of Highgate (good Cockney places that a man has in his head to put) he would not succeed in that cause: no. Now does he say a bit more than he said before? That we have been guilty of a mistake; a mistake that is admitted, and which every body has understood these three days. But if he fancies that this case of an ejectment shews, that *ignorantia non excusat legem* is a case applicable to this, permit me to put this together, to see how much they are alike—My case is a case of ignorance of the law, where an ignorance prevailed; where the mayor, town-clerk, recorder, and all were ignorant of it—Is that the case here? Why, this is the case of a single man going to law, who knows no more about ejectments, unless he goes to lawyers, than I do of Arabick: it behoves him to be correct who is injured in this business of ejectment himself—But is he misled by any body? not a bit—whereas our poor voters (to use a language my friend loves dearly), all we, like sheep, have gone astray, following one another, and that great bell-weather, Mr. Mayor, at our head. Then there is another case of law too, in which we don't advance a jot: still says my
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learned friend, a parson not rightly inducted into his living cannot vote for it:—agreed. What does this still prove, but a proposition that has never yet been denied? That if a man mistakes to get properly into possession of his title to vote, he shall lose his right to vote.—Sir, I trust, that I have shewn, that a great many of these sounding, these lawyer-like propositions, which my learned friend laid down with such a thump and emphasis, which had an effect upon you and the hearers, because they gave them credit for an application to the case, are found now, in truth, to have no application to the case: because that this is so as a general proposition, I do admit; but the case that they have applied, allows that there are exceptions: and we come now to the single question, Whether this is that sort of case? Now let me ask you, for I have a right to ask you in this case, whether, as men of honor and justice, you don't find yourselves inclined to favor the case of the petitioner upon these circumstances? As counsel for Mr. Coke, I never flattered myself, that I was counsel for a favorite with his judges: Mr. Coke pretends to no such powers, and no such influence; he keeps modestly in his place at your bar, instructing his counsel. He ought to be here, it is fit he should be here: he has no right, nor has he ever dared to ascend to higher places, upon the right, or upon the left-hand side of the committee, as the friends of the fitting member have done, with no effect I will answer for it. We pretend to no favor, but what I dare boldly ask for, the favor that the cause of justice and common feelings must give the man, that comes with a case so circumstanced. Why then, Sir, here we are, with a mayor and aldermen, and town-clerk, and all the powers of the corporation against us; here we are in a mistake
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[127]

of the law, from the top to the bottom: we apply to the persons we suppose have a right to do all; they refuse all; in refusing that all, they refuse that which was necessary, and which was in their power to do. This mayor, I beg leave to say, with no merit at all, but with infinite demerit, and a base conduct, that reflects infamy upon him, and those that set him about it, for I don't know that the common practice makes it a bit more excusable to play the knave and villain in election cases, than any other: it is almost admitted, if it is not, it must be seen by the committee, that that was the spirit in which he acted; we applied for what they had a right to do—with that spirit they robbed us of it; with a contrary spirit, I trust, this committee will restore us to it. I should not forget another argument that Mr. Mansfield made use of, and that was, I admit, of somewhat more importance, because it had somewhat more artifice and ingenuity than those, that I have stated: Mr. Mansfield tells you, the utmost that the petitioner's counsel can require, is, that you should give them the full effect of the vote of those persons, as much as if they had actually been admitted by the mayor and three aldermen:—says he, that is the utmost they can ask for; and what is the utmost effect of that? why, that they should not be entitled to their votes: for those, who were actually admitted, are upon the poll, but equally upon the one side and the other:—they ought to be rejected: he assumes that proposition, and he supposes no difference can be pointed out between the twenty-six or twenty-seven, and those that stand upon the poll, who actually were admitted, previous to the election. Sir, the difference is obvious, and I have already pointed it out, in another part of my argument: the difference is this; that those men, who were
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admitted upon the poll, were not stopt in *limine*, they were permitted to take the oaths to government; the mayor and three aldermen had done all that they could do; and as to all the rest, it was ignorance upon both sides: but that was not the ease with our men; they would not let them go so far, and therefore the difference is obvious. I wish to be understood here, because it seems to me that here is a clear discrimination: permit me, even if I should offend by repeating it again—Mr. Mansfield's argument is this: these men cannot be entitled to more than they would be, if they had been actually admitted by the mayor and three aldermen:—if they had been actually admitted, as several persons were, they would be permitted to poll: in that case Mr. Coke would have had a larger number of persons, who were admitted by the mayor and aldermen, and were in consequence admitted to poll; and of course Mr. Gisborne would have had a legal objection to them: and there being a larger number in favor of Mr. Coke, than in favor of Mr. Gisborne, he would have had a considerable advantage upon this legal objection. I admit it; but, thank God, it happened otherwise; because there is a difference between these men; and if the mayor had really permitted them to have taken the oaths, and then had done, what he had not a right to do, administered the oath of a burgess, then they would all have stood upon the same foundation: but it is not the case here; the case of our tendered men, is, that that was not done which might have been done by them, and which is as necessary, as the admission to the burgessship. I hope I make myself understood; I trust that is a material distinction, and I trust it is an answer to this, which is the only argument, I own, that struck me, as any thing material upon the occasion. My
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learned friend, Mr. Mansfield, tells you, that infinite exactness in this case is requisite, because you are asked to go before the law, and are asked to consider them in possession before they are so: a case of justice and of conscience is requisite, but where is the dictum, as my learned friends have called upon me so often, which talks about this infinite exactness, or that lays it down to be requisite?—I was very glad to find, that Mr. Mansfield, after he had gone through this main part of the case, is followed by Mr. Lee; they dare not rely so much upon it, but have attempted to niggle at a few instances of our proofs in the cause—as to that, it is fit for me to follow them, as they have thought fit to lead the way, otherwise I should not have troubled the committee with a single observation about any particular vote; for you will see it depends upon the main question, and they have no occasion to trouble themselves with any particular vote—Says my learned friend, Mr. Lee, they offered nothing but themselves, their persons, their faces, their wigs, and their cloaths—is that true? Is it not in proof that they tendered every thing that used to be tendered, every thing that used to be satisfactory, except to Mr. Heath, the mayor, upon this occasion? Will this committee lay it down as law, that every man, before he shall be entitled to sue out his mandamus, or be admitted to a burgesship, shall tender the formal proof; that he shall come with the subscribing witnesses to the indenture, and all the several proofs, that we have brought afterwards, when we come into a court of justice, when we come here? it has not been the custom:—When is it necessary? it is necessary when a doubt is expressed. They promised to meet in the afternoon upon the 5th; they promised upon their honor to

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meet upon the 9th, and upon the 9th there was another promise to come upon the 16th, and a promise to examine all these things between the 9th and the 16th:—not a single step was taken, not an intimation of a doubt to the parties, nor were they called upon to produce any other proof than that, which had been the constant practice of the borough to produce in that case. I trust you will never lay it down as law, that more proof will be requisite when we come here:—what do we come for? merely to prove, that they tendered themselves, and all those things, that have been usually required as proof in the borough: but we come here to prove more, we come here to prove that they were technically right; that is the reason, why I produce the evidence here. I am sure the committee understand perfectly, why it was not produced at the time: but Mr. Mansfield gives some of the oddest reasons, why you should not take it upon the proof that is now given; that some of these, he does not specify which, that would not have answered his purpose, that they are sons of freemen, or served freemen, because some of them are extremely old, and because witnesses must have been dead, that could prove the fact: he calls upon us to prove it. I know he has in his turn attended sessions, where that kind of law occurs; and I am happy, I see more than one upon the committee who understand that kind of law very well; he calls upon the committee to believe, that the production of both parts of an indenture is no manner of proof of service: you know very well, that the fact and custom is for a master not to give up the indenture till after the seven years is closed; you know very well, that the value of an apprentice's service the first three or four years is nothing, but the last part is some-

something worth. And now let me ask who talks like a lawyer, when Mr. Mansfield goes farther, and wants you to presume fraud? he very modestly asks you to presume, without any proof, that the master gives up the indenture for the purpose of this election; afterwards, when in truth the apprentice had not served out seven years—nay, goes farther, and asks you to presume a capital forgery of a deed, that he just now fabricated for the purpose, an indenture having no real existence:—Is this talking like a lawyer? If a gentleman, who knows how to talk like a lawyer as well as any man that wears a gown, finds himself thus reduced to talk, the consequences you will form in your own minds; he is driven in point of fact, as hard as he is in point of law; he abuses himself, for in the zeal of his place, as advocate for the party, Mr. Mansfield very fairly tells you, that, if he had been in the mayor's place, he would have out-mayored the mayor: I would have waited, says he, long and long—Then to that let me put this single question: Is there one of you, now sitting upon the committee, that thinks the mayor waited out of care and caution? Is there one of you that is not satisfied, in his own mind, that the delay, from the first moment of the application, was for these election purposes?

I come now, Sir, to my friend Mr. Lee, who very fairly told you, that Mr. Mansfield had left him nothing to say; and to say the truth, excepting those things that I have taken notice of already, I don't find my learned friend, Mr. Lee, has said any thing more than Mr. Mansfield said before: he has said it in a different manner. Sure I am, he has no right to complain of the weight and manner of Mr. Mansfield's diction, for he has improved those things that he said, in the way

and manner in which he enforced them—I am not aware of any argument that he has made use of, except for the sake of Mr. Mayor; and that he should not be the only man that should be hooted, when he comes back to Derby, he chooses to baste this parish-clerk of ours: somehow or other, I don't know how, my learned friend's righteous soul was over-much moved in favor of that parish-clerk; he will pardon me, when I say, what a bluster he made about it; when he made a great parade about that poor grey old man of seventy, with a pair of spectacles, who told you a great deal that he need not have done: but compare my parish-clerk with his mayor, and I am sure you will think he is washed white indeed.—How was he treated? Come, said my learned friend, when he came to cross examine him, remember my old friend, what a number of sermons you have heard as parish-clerk; and he preached him another: and my friend was a little angry with me, he gave me one of his looks, that I am glad I took from the poor old man—“O, this is not a case to be jocular about”—And what was it all about? it was whether it was Wedgeworth, or Wedgewood; and there is not a person, I believe, but was perfectly satisfied it was Wedgewood: if it was otherwise, why did not the gentlemen go into that? my friend having made it of such importance, depend upon it he thought so; and if this was so black and shameful a transaction, the utmost of the wickedness, that he was guilty of, was to make wrong, right: but even in the case of a register, I admit that is not to be done. My friend, Mr. Lee, then goes into the minutiae of the case, which I am sure he does not think, in his own mind, goes at all to the merits of this election: they are but a few, therefore I shall follow him, otherwise I would not:

not: he quarrels with the proof of one Clarke's service of his apprenticeship; he says, what! can the committee take this as a proof of a service of seven years? Why, Harrison, that proves it, was in London, in the middle of the time, for a twelve month: he saw him in his service at the beginning, and at the end of the seven years. I take it that is good presumptive evidence, that there was a middle: if he did not serve the seven years, why did not the gentlemen prove it? They say some of these were the causes, why the mayor acted thus; and that he wanted them to use care, caution, and enquiry: did he use that care and caution, did he make that enquiry? Then why don't we see the effects of it? If this man did not serve all his time, why don't we see the proof of it? and why so lucky to meet with some two days after the election closed? Mr. Mansfield said, if he had been the mayor, he would have been longer, and which I give him credit for, because it would have looked a great deal better. Hancock and Maddox, two apprentices, are objected to upon this ground, that they did not serve according to the custom: that custom is stated, and I understand it to be so; but the election will not turn-upon that. I understand the custom, as to apprentices, to be merely this: that they shall be bound to a master in Derby, and that they shall serve seven years in Derby. When we talked of it, it did not occur, I am persuaded, to either of us, or to the committee, but that all that was necessary, was, that he should be the apprentice of a freeman, resident at the time of the execution of the indenture, and should serve seven years. Why, what is the case? His master was resident when he was bound to him, his master was absent five years of the time afterwards—But what did the men do? These two apprentices, they
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served in Derby all the time : Are they not entitled to their freedom ? Did not they gain a settlement, as serving as apprentices ? Did they not serve as apprentices under this indenture ? Did they not serve this master ? Whom else did they serve ? Let them take it for a moment, that they served somebody else ; that is, in point of law, serving the master, if it is by the direction of the master : — so I beg leave to say, that these two persons must be considered as doing all that was incumbent upon them to do ; they served the seven years in the trade, to which they were bound, to a burghers resident at the time they were bound : they serving the trade, and exercising it in the place ; and let me borrow from my friend, Mr. Balguy, a very sensible argument, we are to get at sense if we can ; — And what is the sense of the borough ? Why, that these men, that have for seven years together resided, and consumed the fruits of the earth, for that is some merit, and that have done the work and business in that place : — all this, these men did do ; and, I trust, without mighty strong proof, much more than the gentlemen I am sure can give, if it were material to enter into this case, you will hold these men entitled. Well, Sir, but my friend is so hard driven for one apprentice to quarrel with, that by virtue of his own sovereign authority, as it seems to me, he chooses to re-hear a case, which, if I have any understanding and recollection upon the subject, has been decided by the committee. How long did we moot that question, whether that witness, who came to give parole evidence of that turn-over, should do it ? The committee did decide, that it was determined the man might give the evidence : he did give it, and I trust it will not be called over again. — The next person is Sale, who was an apprentice to one Fear-

Frearson; and the objection to him is, that though it was a great number of years ago, it was attempted to be proved by Alderman Eaton—that he said he could not say much about it:—I take it to be so; but you will recollect there was other proof in all those cases, as there was in the case of Sale: for we did not produce other proofs, where we produced both parts of the indenture, as necessary, but to give that satisfaction, which, where it can be given, it is necessary to do. But, I do insist, before the committee, that the double indentures produced, are sufficient evidence of his having served his apprenticeship.

Mr. Chairman. Does the fact of the double indentures apply to Sale?

Mr. Lee. No; they called two men to prove it, who did not prove it.

Mr. Bearcroft. I admit they did not prove it.—My friend and enemy remind me of two things, it seems, that I had omitted; the one was, that I don't say any thing to the circumstance of such a vast number of persons, that were tendered upon the 5th and 9th, to the mayor, and which afterwards were not admitted, and who were rejected; they clearly now must be taken to have no right at all; it is still an excuse for the mayor—Why, can you expect the mayor at this time of all others, which requires care and caution, to admit these few persons, to enquire into their right, when they are incumbered with such a number, that made it impossible to enquire into their right? These ninety—that is the observation they make upon it. Why, if the mayor had not time to go through ninety, I trust he had an opportunity to go through nine; and it is no excuse, because all the work cannot be gone through, when he can do some, that he is not to set about it. Still it rests upon the question,
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I have before put to the committee, whether he has not totally satisfied you, with what a view he acted upon the occasion.—It seems, that the gentlemen will help me to another excuse, which my friend puts me in mind of, and which I had omitted to take notice of; and that was, that of those six, who had attended a month before, and were admitted upon the 9th, that three of those afterwards turned out to be bad. Now as to that, for the present argument, I admit, though the truth was not so, that they were bad: Masey and Harrison, that they were non-resident; as to the other, Johnson, he was to have voted for Mr. Gisborne, and that is the reason for his admission at the time. Does Mr. Lee now, at this time of day, ask of the committee to believe, that the reason, that the mayor did not proceed one single step in this business, was because he had found out, that three persons of the six, that had been admitted, were not good? Does he ask that? What did the mayor say? He said that was not his only reason, though that was whispered him by some friends of Mr. Gisborne, as he came down the steps. I should not have spoke to this, if my learned friend had not put me in mind of it; but I do rely upon it, without saying one word more about this mayor, that there is not a gentleman upon the committee, but sees clearly, with what design and spirit he acted, and how far it is material in the present cause. Then, Sir, the whole complexion of it, and the sort of case is now before you. My learned friend, Mr. Mansfield, closed, by calling upon this judicature, not to free itself from the fetters of the law; I trust, that I have a much better right to call upon them to free themselves from any fetters of any sort, and to administer free and liberal justice. What do the fetters of the law confine them

them to in this case? Why, the fetters of the law confine them to the actual and formal admission—You have got out of the fetters, you have shook off the shackles:—the case, that they admit, sets you at liberty to do justice—I trust you will see it in that light, and I know you will administer justice by your decision.

[Court cleared.]

Adjourned till to-morrow.



T SEVENTH

SEVENTH DAY



Jovis 8^o Die Februarii, 1776.

Committee proceed on the *Derby* Election;

Committee proceed in deliberation—

Resolved, That those persons, who applied to the mayor on the 5th, and 9th, and have proved their rights, be added to the poll.

Resolved, That John Wedgewood be added to the poll.

Resolved, That Thomas Bilson be added to the poll.

Resolved, That Charles Clarke be added to the poll.

Resolved, That Thomas Hancock, and William Maddox, be added to the poll.

Resolved, That Thomas Jones be added to the poll.

Resolved, That John Gisborne, Esq; is not duly elected a burghers, to serve in parliament, for the borough of Derby, in the county of Derby.

Resolved, That Daniel Parker Coke, Esq; is duly elected a burghers, to serve in parliament, for the borough of Derby, in the county of Derby.

THE END.